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Trial of
J. Magee
1813

The Trial

OF

JOHN MAGEE,

Proprietor of the Dublin Evening Post,

FOR PUBLISHING AN

HISTORICAL REVIEW

OF

THE DUKE OF RICHMOND'S ADMINISTRATION IN IRELAND,

Tried, in the Court of King's Bench, on the 26th and 27th July,

BEFORE THE

RIGHT HON. CHIEF JUSTICE DOWNES, AND A SPECIAL JURY.

To which is prefixed,

A REPORT OF SEVERAL MOTIONS, GROUNDED ON MR. MAGEE'S AFFIDAVIT, TO POSTPONE HIS TRIAL, UNTIL MICHAELMAS TERM.

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TO HIS EXCELLENCY,

LORD WHITWORTH,

LIEUTENANT GENERAL, AND GENERAL GOVERNOR OF IRELAND.

The following Pages containing an Account of the TRIAL of

JOHN MAGEE,

FOR A LIBEL ON THE GOVERNMENT OF HIS GRACE THE DUKE OF RICHMOND,

AS COMPRISING

A MEMORIAL OF POPULAR FEELING,

A RECORD OF OFFICIAL IMBECILITY,

AND

A MONUMENT OF LEGAL VENGEANCE;

IS, WITH GREAT RESPECT, INSCRIBED—

IN THE HOPE,

That warned by the Folly and Intemperance of the Law Advisers of the Castle,

Folly manifested in a Crusade against the People,

And Intemperance in the discharge of Official Duty,

Lord Whitworth may reject that Advice, which has brought upon the Government of his Predecessor,

The Disgrace of Persecution,

AND

The Mortification, in all its efforts, of absolute Failure;

WHILE UPON

The Peace of the Country it has showered Firebrands, which will require all the Address of

A STATESMAN,

Vigilantly guarding against the Insinuations of Trading Lawyers, to extinguish.

Received May 10, 1911

PREFACE.

IT has always been matter of surprise to us, how entirely, in their disquisitions upon Irish Affairs, Political Writers have neglected the consideration of the Irish Character. It is true, Man is the Creature of Necessity, and, in some measure, the Child of Circumstances; but it is equally true, that there is a primitive, and, despite of all our veneration for LOCKE, we will add, an *innate*, character in every Nation, which resists the operation of extrinsic accident, and survives, when every plank of Society has gone to pieces, and every ensign of Antiquity has been whelmed in oblivion; even in the ruin of ages, and in the deluge of revolution, an indestructable spirit moving upon the waters that cover the memory of the past.

The fact, indeed, of an original and peculiar trait in the character of a People, of certain strong and national individualities, however questioned, or with whatever ingenuity impugned, has always appeared to us to be based on principles philosophic as they are obvious, and simple as they are irrefragable. Its truth we hold to be quite as indisputable as the differences of complexion which obtain among the races of mankind; as the dissimilarity of a Krim Tartar and a gentle Hindoo, of a towering Patagonian and a diminutive Native of the Kingdom of Sego. Not to state the reasons for this opinion, which reasons must be familiar to every philosophical inquirer, we shall only insist upon the fact, historically demonstrated, that the character of the modern Irish bears a prominent and palpable resemblance to that of their remote

Ancestors. It is unnecessary to marshal the particulars. Those read in the more ancient History of Ireland, and conversant in modern Irish Affairs, will, after some consideration, agree to the justness of the remark.

But subscribing, as we do, to the doctrine which inculcates strong and characteristic distinctions among the families of mankind; allowing that though the hand of Nature be powerful and apparent, yet we admit, that Society exercises an influence, if not more controuling, at least more tangible and obtrusive. LAW, in the scientific and expanded sense of the term, or if the Reader chooses the complex phraseology of modern schools, political institutions, as they may be said to form the education of the State, as they tend to modify the character of a People, to extinguish certain peculiarities, perhaps, and to add certain adventitious traits LAW (for the Koran is a Civil as well as a Religious Code,) has made the Turk a barbarian—the Russian it has rendered worse; from the recollection of the Greek it has almost effaced the memory of Thermopylæ; the country of the Graechi it has sunk into slavery; and France, high spirited and glorious as she is, it has bound down, and buried in an iron despotism.

Upon the operation of LAW, or to use the lax Parliamentary phraseology, of the Constitution, on Great Britain and Ireland, it would be superfluous to expatiate. England it has made free and wealthy, but has given her Lawyers, at the same time, tremendous Code, and Taxes, as a consideration and a counterpoise, for liberty and riches. Its operation upon Ireland has been a perennial plague, a perpetual scourge. The pen of TACITUS, admirable as it was in depicting Human Monsters, would drop from the Historian's finger, if he attempted to describe the Law-givers of Ireland; the page of Robertson, dreadfully as he pourtrays the butcheries of Cortez and Pizarro, absolutely sinks before the supereminent depravities, recorded of the British Deputies in Ireland by creditable English Chroniclers.

Yet, though their Modern History does not present many pictures which they can survey with complaisance, there are few People more ardently attached to their native soil—few who display a more passionate enthusiasm for country, and none are distinguished by so singular and characteristic a nationality as the Irish. Whether this enthusiasm and nationality arise from a aboriginal feature in the character of the People, or whether they proceed from historical association, or whether the sentiment be compounded of both, would be a curious, and by no means an uninteresting question to investigate.

We have already acknowledged, that we subscribe to the Philosophical Creed which inculcates the doctrine of different Families in the Nations of the World. Indeed, an admission of this doctrine seems almost necessary, as a key to explain the pertinacious adherence of the Irish People, to their ancient character. If mere external circumstances—if the operation of five hundred years of Anarchy—if Civil War and Foreign Levy—if CONFISCATION, EXPATRIATION, EXTERMINATION could produce a radical change in the character of the country, such a change would be accomplished a century ago. Not to revert to the sanguinary conflicts of the Pale—not even to refer to the rival destroyers, MOUNTJOY and CAREW, who desolated the North and the South at the same time; from the planting of JAMES, through the horrible intervening period, which is divided by bloody landmarks—by the confiscations of the infamous STRAFFORD—by the unsparing scymatre of CROMWELL—by the more crafty and cruel Robberies of ORMONDE, down to the Revolution which gave Freedom, Taxes and Corruption to England, and which cursed Ireland with a Slavery worse than African, and with a Penal Code worse than Hellish, Property changed Proprietors, three times—the Land passed through three distinct stocks of Owners. Nor was this change made by purchase—by the regular and beneficial operation of Commerce, as in those Countries on the Con-

tinent, which have been the seat of war for a thousand years—not through the instrumentality of Law—*not even by Conquest;* but by FRAUD the most complicated and systematic—by ROBBERY the most atrocious and general, of which there is example in the records of human wickedness. To concentrate, by a comprehensive character, the terrible array of particulars which this infernal period presents to the memory—to give even an outline of the Miseries and Murders, of the Violence and Treachery of those times, would be impossible, within the compass assigned to this Preface, and perhaps not necessary to the doctrine we mean to establish. The result of this policy, however, since we must abuse the term, was, THAT FIVE-SIXTHS OF THE IRISH PEOPLE WERE EXTERMINATED, AND THE OTHER SIXTH BEGGARED. What Fraud and Violence left undone, Parliament and the Judges finished.

It is nevertheless remarkable, that, through all these shocking scenes, when one should suppose, that, with the disruption of Society, the National Character would be eradicated; when the Pillars of the State were pulled down, and the People crushed beneath their weight—it is remarkable, that the Irish Character, like the Classical Giant should derive renovated vigour from touching its parent earth, should rise from the ruins of its Country in its pristine freshness. It is amazing, indeed, to contemplate how little the Irish Character has lost, in the Revolutions which have swept with such disastrous violence over Ireland.

But, though the National Character may have lost little of the Master Passion, of the Ruling Peculiarity stamped by Nature on the Primitive Irish; yet, that character has acquired adventitious traits, has taken certain directions, and assumed a particular colouring from the Historical Circumstances to which we have obscurely referred. The influx of the English Nation, for a period of Seven Centuries; the introduction of a New Religion, the prolific Parent of an hundred Sects, and the

rancorous wars by which the Revolutions we have indicated were accomplished, eventually operated in dividing Ireland into Three Religious Estates; Three Families, each distinguised as strongly in their Civil and Political Character, as by their respective Doctrinal Tenets in Religion.

I. The Catholics, who comprise, with the exception of the Northern Counties, the Population of the Kingdom, and who, with less substantial reason to be pleased with their lot, are the most National of the three.

II. The Presbyterians, who mingle with considerable nationality, a love of Freedom, governed by a principle of Prudence, not deemed very compatible with the Irish Character.

III. The Protestants, who are the least numerous of the three, but, among whom, with almost an entire exclusion of the other two, are diffused the patronage and honors of the State.

We purposely omit the minor Religious Sects, and could with disgust, the deleterious diffusion of Methodism. These can have no influence upon the general view. In Ireland, even the intolerant and hypocritical followers of Wesley, are too insignificant to excite the alarm of the liberal and patriotic.

The Protestant, the Presbyterian, the Catholic, we view with an equal eye. The good of one, well considered, will be found the good of all. Ireland is their common Country, and her prosperity their respective advantage. That they are equally attached to their native soil, it would be absurd to deny; but to pretend that many among the three Sects, equally patriotic, equally zealous for their Country's glory and happiness, do not take widely different views of patriotism, would be unfair and puerile. They differ widely, indeed, and to this difference, indurated by the Laws, and exasperated by the Government, Ireland owes all her misfortunes.

Let it be remembered, that in what we are about to offer, we always speak with a saving clause to the enlightened and liberal of all parties. These are

already numerous, and they are every day encreasing.

With regard to the Religious Denominations, through which we mean to contemplate the condition of the Country,—

As the creed of each points out a different path to Heaven, so the politics of each point out a different road to national prosperity.

Secondary causes, doubtless, have an influence over each, and there are many in the three classes who are not governed, upon the subject of politics, by the tenets of their sects—but the primary cause is the difference of Religion.

Not the doctrinal differences of Eucharist, Supremacy, and Predestination, but the consequences of professing the doctrines—

A belief in the Real Presence, and an adherence to the Ancient Faith, makes the Catholic an Alien in the land of his forefathers.

The rejection of Episcopacy, and a modified belief in the doctrine of Necessity, renders the Dissenter a Sojourner.

A belief, or more properly, a subscription to the Thirty-Nine Articles, makes the Protestant a Free Citizen in the abstract. But it is in the abstract only.

The Catholic and the Presbyterian regard him with jealousy, as monopolizing those honors and emoluments in which they claim an equal share, as a natural right.

The Protestant cannot resist the doctrine of Original Right, but contends that his Right is conventional, and that his Power is expedient.

The Catholic denies the first, for he was not a Party in the Compact.

The Presbyterian denies the second, upon the ground that, though it is expedient the few should rule the many, it is not expedient that the few should be collected out of a particular *Caste*.

The Protestant pleads Proscription.

The Catholic pleads Natural Right.

The Presbyterian pleads Moral Justice.

The religious differences between the two latter are more than counterbalanced by their political agreements.

But the distinctions are still palpable and obtrusive. It gives to the nationality of these classes, or, more correctly, to the extremes of these classes, different channels. They all issue from the same source, but they are widely separated in their meanders.

We have been hitherto considering the National Character, independent of extrinsic circumstances —independent of the operation of Foreign Events. These, however, for the last twenty years, have operated more strongly upon the Character of the Irish Nation, than they have done since the Invasion of STRONGBOW, and the predatory incursions of the LACIES and FITZGERALDS.

Though adherence to the Ancient Faith still marks the great majority of the Irish People, the French Revolution, by removing Religion as a basis for political action to operate upon—by preaching the natural right of all, without referring to the particular tenets of any, has drawn the more philosophical of the three Sects together, has united the thinking, the liberal, and the writing part of all in favour of Civil and Religious Liberty.

The Prejudices of the Protestant have been softened.

The Asperities of the Presbyterian have disappeared.

The Bigotry of the Catholic is going.

But there still lurk in each Sect certain repulsive particles, certain ancient and secret stimulants.

These it is in the power of Government to remove or to exasperate.

Community of Right, by lifting all to the same level, would produce the harmony of the whole.

The conduct pursued, during the latter part of the Duke of RICHMOND's Lieutenancy, will widen the breaches of popular discontent, and irritate,

even to Public Danger, the wounds of the Public Mind.

In this view, the circumstances of the following Trial constitute, perhaps, the most instructive Manual that could be put into the hands of a new Viceroy.

If it be the intention of Lord WHITWORTH to exasperate, and rule by the advice of Lawyers, without consulting Common Sense, he will see how Irritation can be answered: he must calculate until the *Habeas Corpus Act* is suspended, and Mr. GRATTAN's *Insurrection Bill* becomes a Law, upon such topics as he will find in the alleged Libel, and in Mr. O'CONNELL's Speech. If he pursue a different plan, we will promise him tranquillity, and even a certain portion of popularity,

We have developed the three grand features in the Irish Character, and traced them to the Political Dissentions growing out of the respective Religious Doctrines to which the Catholic, the Presbyterian, and the Protestant respectively subscribe.

But there is another difference arising originally from the confiscations, nourished by the Penal Code, and hardened by Religious Bigotry.

The Landed Proprietors of Ireland do not regard their Tenantry with affection. There is no common interest, no mutual liking between them. The Peasant is worked like a horse, and treated like a dog. In the South and West, he is sent to starve upon a bog; in the North and in the East, he is exposed to the musquet of the Orangeman. He appeals in vain to the Magistrate, in Connaught and Munster, to redress the injury of the Proctor, or the insult of a blow;—the Magistrates in Leinster and Ulster will not listen to informations against a Loyal Man.

We speak, of course, with many honourable exceptions.

The consequences are, Jealousy and Distrust, on one side—Hatred and Hypocrisy on the other.

Yet, there is not a more national being under the Sun than the Irish Protestant Gentleman; one who so instantaneously catches fire at a national affront. There is not a creature in the World so attached to the soil upon which he starves, as the Irish Peasant.

But, independent of the causes we have stated, to account for these strong lines of distinction, there is another which seems to have been overlooked by all Writers on Ireland.

The English Nobility is English.

The Scottish Nobility is Scotch.

The Irish Nobility is *not* Irish.

We shall explain ourselves. The Nobility of England is Norman to a man. We do not speak of particular families or of extinct titles. There may not be now a direct descendant of a Peer created by WILLIAM THE CONQUEROR—there is not; but all the Peers are either taken from the Norman stock or from blood *purified*, to use the cant of Heraldry, by a Norman Alliance.

The Scottish Peers are the most ancient and powerful Families in Scotland—heads of celebrated Clans from times almost immemorial, and Lords of immense Tracks. There are many fine Historical Associations, which bind them to their Country and their Titles; and hence the Scottish Nobleman is as proud of his Highland Bonnet, as of his insignia of the Thistle.

An Irish Nobleman, on the contrary, is, comparatively speaking, a man of yesterday. The oldest Peers of Ireland, are those called Strongbonians—Fitzgerald, Debourg, Butler. An Irish Peer of ELIZABETH, JAMES or WILLIAM is already grey with the Honors of remote Antiquity. In the Peerage of Ireland, there occur only two Irish names, O'BRIEN and O'NEIL.

The Irish Peers are not bound by Historical Association to Ireland, as the Peers of England and Scotland are respectively to their Countries,—

They are linked to Ireland by their Estates, and by their Estates alone. *Antiquam exquirite Matrem* is the general mandate among them, and is generally obeyed. England is the Country of the Irish Nobleman—it is the Seat of his Ambition and the Scene of his Pleasure. He ruled Ireland, when he had the power, with a rod of iron, with the scourge of Scorpions. When she was to be bought, he sold her without shame, and without compunction. If the English Minister gave but the word, he would steep her in blood. Thank God, however, the claws of the Irish Aristocracy are cut. Thanks to the Union, for this at least, the Upas Tree has been felled, and now lies an innocuous and dishonourable trunk.

We have described the Catholic as an Alien in his Native Land. He is, it is true, an Alien, so far as he is denied a participation in the Civil Rights of his Countrymen. But the Irish Peer is the real Alien; if, indeed, he happens to visit Ireland at all. He cannot look with pride to the origin of his Irish honors—all his predilections, prejudices, associations are English. Though the names are numerous, and the titles sounding, the Corinthian Order of Polished Society does not exist in Ireland.

To sum up—with the exception of the Peers alone, the Irish may be called a National People; but their Nationality has been coloured by the Prejudices, the Religion, and the Interest of the different Sects. There is not, as in England, a common principle of Union between all the Classes of Irishmen—nor, as in Scotland, a common principle of Utility.

But, though in Ireland there be much Nationality in Sentiment, there is little Patriotism in Practice. This defect proceeds from the cause already indicated. Each sees the Interest of Ireland in the accomplishment of its peculiar objects. They run different ways, of course, as in "the olden time," and Ireland still remains with all the enthusiastic

love which Irishmen bear her, divided against herself, prejudiced against her own interests, and oppressed by her own Children.

Amelioration, however, has taken place in one respect. By the destruction of the Aristocracy at the Union, Ireland has been delivered from the pressure of an enormous evil. The Union was an infamous measure, it is true, but it pulled down an infamous Legislature.—The interests of Ireland were sacrificed by that measure, but she was taken out of the market. She was no longer a mercantile commodity.

When there was no political objects, for the bartering of which money, or what were called honours, might be procured, one should imagine that much Provincial oppression, practised before with impunity, would cease. Government having destroyed the Aristocracy of the Country, it was natural to conclude, that it would not allow the *Disjecta Membra* to exercise a discretionary authority. There were no Parliamentary interests to be propitiated; no Vote to be secured; no doubting Patriot to be fixed in the ranks of the Minister.—Under such circumstances, one should infer, that the Castle, relieved from the duties of brokerage, would exert its power in keeping the Petty Tyrant, now no longer formidable, as well as the turbulent Peasant, in order. One should imagine, that, since the Spectre of Ascendancy, which so often awed the Government itself, was laid by the Union, since the Castle was no longer haunted by its terrors, that the Lieutenancy would recover from its apprehensions, and act without a reference to the hideous phantom. In a word, it was the expectation of all men, *it was the promise of the Minister himself*, that the new Government should not, as formerly, be selected with a view to the Colony—that it should not be the Government of a Garrison in an Enemy's Country—that the Country itself should share its paternal care—that its Motto should be,

"*Tros Tyriusve mihi nullo discrimine habetur.*"

"*Tres Tyriusve mihi nullo discrimine habetur.*"

That this would be the rational mode, it requires no argument to demonstrate; so rational, indeed, is the mere satement, that even the Duke of RICHMOND pretended to be governed by the rule.

The Aristocracy was no more—its Remonstrances, its Menaces, its threats of Patriotism, its fits of Independence, were now utterly harmless. The power of the Castle was not frittered, diffused and broken. It might act, what it never could do previously, in opposition to the Aristocracy, even if the Aristocracy had the means of opposing. But the Nobility and Gentry would not oppose the Government. Stript of all honourable power, they have lost all self-consequence. The Irish Nobility is a blank. It is no longer heard of. The upper orders of the gentry verge in proportion to the magnitude of their estates to the same undistinguished character. They are Emigrants—they are Aliens—they are ABSENTEES. The only Gentry in Ireland at present, are those who derive their fortunes from successful speculations in commerce, and those whose limited incomes may make them welcome to the first Society in Ireland, but which must banish them the igher circles of English Rank.

Now, since the formidable barrier between the Government and the People, which the Aristocracy presented, has been broken down and laid in the dust—and since it is clearly the interest of the Government to conciliate the People—it may be asked, why have not the Viceroys who succeeded Lord CORNWALLIS, attempted to act upon the principles of conciliation?

It will be answered, that Lord HARDWICKE did so and we are not disposed to withhold from his Lordship such merit, as from this part of his Administration, his friends feel disposed to claim for him. Whatever be the errors of 1803, his conduct in 1805 was that which became a prudent man.

The Duke of BEDFORD came over as the grand Moderator; but it must be acknowledged, that the

leniency with which the Orangemen of the North were treated during his Lieutenancy, was not calculated to afford much satisfaction to the great bulk of the People, while, at the same time, it was far from satisfying the minority.

On the arrival of the Duke of RICHMOND another scene opened. The principle which placed his Grace in the chair of his Predecessor, was odious to nine-tenths of the Irish Community.—Yet, with the exercise of common prudence, his Vice-reign, though not prosperous, might have been, at least, tranquil; and, though it could never have been popular, it might, had ordinary discretion been practised, be rendered in some degree respectable. We have already indicated the advantages which he shared with his immediate Predecessors, of having no overweening Aristocracy to struggle with. It is true, there were strong prejudices against him, and a considerable clamour was excited against the principle of his appointment—but no man ever had it in his power to disarm these prejudices more completely than he had—no man in his situation could silence the clamour more effectually. If taunted for his Anti-Catholic Principle, he might refer to the preceding Administration, which was the Friend to Emancipation in word, but really was willing to sacrifice its Principles to its continuance in Office. And as to the Clamour, he had only to practise the severity exercised against the Caravats and Shanavests upon the Orangemen, when he might calculate on subduing it altogether.

His first acts were rather of a conciliatory tendency—and he found, in spite of the prejudices which were naturally cherished against him, that he was regarded, if not with affection, at least, without any marked hostility. But it was plain, even at this period, that he had not taken an accurate estimate of the Character of the People, and particularly that he had neglected to take into his calculation, the new circumstances which arose

out of the Union, and the new characters which appeared upon the public stage.

It has been already remarked, that all political power was taken from the hands of the Irish Aristocracy; their local authority was diminished to that of mere Lords of the Manor, or Justices of the Peace—their authority in the State was gone for ever. But though these were destroyed, there was another formidable POWER arising in the Country, a POWER which possessed a unity of principle—which was corroborated by misfortunes—which was bound together, *teres atque rotundus*, by the strongest of all ties, a community of Religious Opinion. This Power was the CATHOLIC POPULATION OF IRELAND. While a Parliament existed, the People were divided by the various questions agitated in the Senate; a Reform in the Commons, a Commutation of Tythes, even a Police Bill, that could only affect the City of Dublin, dissipated popular attention; Emancipation, it is true, was always a great measure, but it was only *one* of the great measures in agitation. It had its share, and a very considerable one, of the public mind, but it had not the whole of it. There were then a variety of Irish Questions—there is now only one. The attention diffused upon the circumference, now *radiates*, forgive the philosophy of the metaphor, to the centre. The Irish Mind has called in its political scouts—it has now consolidated all its forces to a single point. It bears upon a single object—and *let it be always remembered*, there is now, whatever they may be in intention, no hostile Aristocracy, in *fact*, to resist the impetus of public opinion, or to interpose between the Executive and the People.

This great truth, the Government of the DUKE OF RICHMOND did not perceive, or, seeing it, did not estimate at its proper value. In the mean time the Catholics assemble in Aggregate Meetings, in Counties and in Committees. They petition; their petition is rejected. They proceed to consolidate

and organize their Body. They form a General Committee; it is attacked by the Convention Act, and, after two Trials, a doubtful victory is obtained—an Aggregate Meeting is called—the very self-same Committee is voted a Board, and in the opinion, we understand, of all the Crown Lawyers but one, the Board is totally out of the pale of the obnoxious Act.

Never, surely, was there any thing so absurd as the conduct of the DUKE OF RICHMOND'S Government during this interesting period, and never was Victory more complete than that which the People gained over the Law Officers of the Castle.

Defeated in their efforts to subdue the Catholics, the Government turned the terrors of the Attorney General against the Press. They have succeeded in incarcerating two Printers, but they have not succeeded in subduing the public spirit.

In short the public mind is, at this moment, in a state of disquiet and discontent, such as have not been experienced in Ireland since the passing of the Union.

We should venture upon a particular description, but the following Trial gives a more lively view of the state of public feeling, and of the temper of the Irish Government at the close of the DUKE OF RICHMOND'S ADMINISTRATION than we could hope to pourtray. The discussion of the alleged Libel includes most of the topics upon which we should feel ourselves called upon to deliver an opinion.

It only remains to offer some observations on the mode of conducting the Trial, and of the consequences which Government promises itself from the punishment of Mr. MAGEE. With regard to the first, we shall avail ourselves of the topics already canvassed in THE DUBLIN EVENING POST. With respect to the second, we shall break new ground.

Upon the alleged Libel, we shall offer no opinion. It is before the world—it is in the hands of the People—it has made an impression lively and lasting; that impression has been increased by the circumstances of the Trial; it will be continued and pro-

pagated through the Country by the publication. If there be evil in the alleged Libel, the Attorney General has enhanced that evil; has given it a vitality and virulence that it never could have acquired but from the mischievous meddling of that mistaken and (we speak with reference only to his published Speech) of that very injudicious Officer.

That Speech the Reader will find *verbatim* in the following pages. We have indeed been most anxious to collect every fact, and, if possible, to preserve every word that fell from the Right Hon. WILLIAM SAURIN, the accredited organ of the Irish Government.—With respect to the preliminary efforts of Mr. MAGEE's Counsel to procure an impartial Jury—with regard to the suspicious and indecent fact of the two *Venires*—with respect to the limitation of the Pannel to twenty-four, so unusual, so unprecedented—or, finally, concerning the melancholy admission, on the part of the Jury, that it contained notorious Orangemen, nay, Aldermen of Skinner's-Alley, the most prejudiced and atrocious of the tribe, we shall not offer a single observation. We are bound to believe, that the twelve Apostles of the Protestant Ascendancy, who tried Mr. MAGEE, are decent, conscientious, and honorable men; for there were among them *Purple Marksmen;* (Walter Hall, who murdered the Widow's Son, and who received a Pardon from the DUKE OF RICHMOND, was a *Purple Marksman*;) there were among them Distributors of Bibles, Suppressors of Vice, and Anti-Catholic Petitioners. Therefore, it would be the height of injustice not to acknowledge, that this Jury, so selected, without any intervention of the Crown-Solicitor without any knowledge of the King's Attorney-General, without any corrupt influence from the Irish Court, without the undue exercise of any prejudice on the part of an Anti-Catholic Sheriff—it would, we say, be the extreme of injustice to pretend, that the City of Dublin could furnish a more respectable or a better Jury. We, therefore, like a Father of the Church, whose maxim

was, CREDO, QUIA IMPOSSIBILE EST, most potently and powerfully believe, that the twelve, whose names we shall presently put upon record, are the "wisest, virtuousest, discreetest, best" men in society. Besides, though constituted as we have seen, if they were not fit for Jurors in a Case between the Crown and the Subject, the Lord Chief Justice, the Grand Conservator of the Peace, and the *Magister Morum* of Ireland, would not allow them to try Mr. MAGEE. If the Jury were a packed Jury—we use the abominable phrase merely for the sake of its convenience—if they were culled and selected from Orange Lodges—from methodistical and dishonest Conventicles, or reeking from the obscene and Anti-Irish revelries of Skinner's-Alley--we repeat it, the Chief Justice, who, the Solicitor General will tell us, is, as a matter of course, the best of all possible Chief Justices, would have ordered them, with indignation, out of the box, and as preserver of the decencies of society, would have commanded his Tip-staff to tear the golden chain from the neck of a Sheriff, who, in that case, would be a perjurer to the spirit of his oath, and a disgrace to the form of a man. The character of the Jury which we have sketched, not having been proved—and the Chief Justice, therefore, not having been warranted to act, as we are sure he would, had the Jury been a gang from Skinner's-Alley, or blasted with the Orange Oath, or notorious for their resistance to the Catholic Claims—we are, therefore, bound in law and in *prudence*, to take for granted, and incontrovertible, their personal, and particularly their political integrity. "Good men and true stand together then, and hearken to your names."—

Leland Crosthwaite	Martin Keene
Thomas Andrews	Benjamin Darley
Bladen Swiney	William Watson
Richard Palmer	William Walsh
Thomas Rochfort	Richard Cooke, and
Alexander Montgomery	Edward Clibborne, Esqrs.

This Jury having been sworn, the Attorney-General addressed them, in the Speech which the Reader will find detailed with the most rigorous accuracy in the subsequent Pages. For personal motives, as well as upon public accounts, we have been most anxious to preserve every word that fell from Mr. SAURIN. His station is high, and, if he has been hitherto unfortunate in his political campaigns against his Countrymen, (for though French by blood, he is by birth an Irishman,) he has had, nevertheless, the reputation of being a discreet, at least, a cunning man. After all that has happened, even we will not insult his fallen state, or trample upon a character he has ruined, by quoting the inelegant sarcasm of Mr. BUSHE, who called him the wisest man in the world. But certainly—and we echo on this occasion, at least, the public feelings, we only repeat the opinion of every person who heard him, never did discretion so completely abandon a man—never did cunning so signally and radically fail, as in the speech he addressed to the Jury, for the purpose of invoking not only their Verdict upon Mr. MAGEE, but, if possible, their vengeance, upon the Catholics of Ireland. The alleged Libel, such as it was, furnished ample topics for an Advocate of common sense; it would give such an advocate an opportunity to talk finery and fustian of the DUKE OF RICHMOND—to describe him, as the Solicitor General did, as another Augustus—to exclaim, in talking of this paragon and perfection of Lords Lieutenant—

"Semper honos, nomemque tuum, laudesque manebunt.

This kind of laudation, though very weak, though miserable bad taste, and though participating, in a great degree, of the burlesque, would at all events have been harmless; and we might forgive the flattery, fulsome and unmanly as it would be, in consideration of the place which the Speaker filled, and which demanded, perhaps, a certain measure of panegyric to the Ruling Authorities, as an

equivalent for taking twelve or thirteen thousand pounds a year, as Public Accuser, out of the Public Purse. Besides, the praises of a Lord Lieutenant are such battered common-places—such trite, threadbare, and contemptible verbiage, that they suited completely the *copia verborum* of Mr. SAURIN's rhetoric, and ranged exactly with the limited number of his topics, when out of his black-letter element. But Mr SAURIN, as the Reader will perceive, was resolved to take a wider and a wilder flight—pluming himself upon his pride of place, shaking his unelastic and decrepid pinions, he scorned the beaten and bat-like track, which Nature had assigned him, launched into the ambient air, and, after an impotent effort to elevate himself above the towering and majestic column of Catholic right, fluttered for a while in mid career, floundered at length, and fell, like the co-ordinate heroes of the Dunciad, amid a mingled feeling of compassion, ridicule and contempt. It was really pitiable to witness an aged man, like the Attorney General, working himself, at the very name of Catholic, into a fury that would misbecome an infant—and we, even *we* felt ashamed, that a man, who should be a Gentleman, indulged in such terms as Rebels, Miscreants, Ruffians, in describing the Catholic People of Ireland.

The Attorney General observed, in the course of his Speech, that *The Evening Post* had no terrors for him—we can only say in reply, that the Attorney General has no terrors for *The Evening Post*; it is beyond him—it is above him. He has fallen—he has pulled down his own character, and if that Print ever stoops to struggle with him again, it is only in consideration of the place he holds, or, more correctly, which he has held, in society.

With regard to the Speech of Mr. O'CONNELL, we shall venture to use the language, which, when our feelings were warm, when we were almost under the immediate influence of his eloquence, we employed to describe its effect upon the Court, the

Auditory, and the Attorney General. Upon referring to the mode in which we spoke upon this occasion, and recurring again, in a calmer moment to the Speech, as printed, we really do not see occasion to alter or qualify the expressions we then felt ourselves justified in using.

We are almost afraid, we said, to trust our feelings, in describing the masterly, silencing, *crushing* speech of this splendid Advocate. He just defended Mr. MAGEE, as Mr. MAGEE wished to be defended. No flattering, no parley with the Crown Lawyers, the Jury, or the Court. He knew that the bigotry and beastly abuse of the Attorney-General was not to be answered, as a King's Counsel would have endeavoured to do. In an evil hour, Mr. SAURIN threw down the gauntlet; it was taken up by Mr. O'CONNELL, and dashed contemptuously in his teeth. lattering himself, that his character, as a Member of the Irish Administration, gave him a *charte blanche* to abuse all his adversaries, and to pour a torrent of virulent vituperation upon the Catholics of Ireland—upon the First Press in Ireland, and upon the Catholic Board; he fancied that no one had the nerve, the presumption, forsooth, to oppose and to repel his Billingsgate invective. Mistaken and infatuated creature! how did you feel when Mr. O'CONNELL branded you as a Libeller before the Court, a Calumniator in the face of your Country, and, to your beard, a Liar?—We protest to GOD, we pitied the writhings of the Attorney-General's frame, the contortions of his countenance, and the green and livid hue that alternately succeeded the faint flushing of his quivering cheek, while lying upon the Precustean bed of Mr. O'CONNELL's eloquence. The sweat trickled down his forehead, his lips were as white as ashes, his jaws elongated, and his mouth unconsciously open, while the lava of the indignant orator poured around him with no unsparing tide, and seemed absolutely to dry up and burn the source of respiration. Indeed, when the Reader considers the auditory that surrounded the Attorney-General—when he reflects that the

Commander of the Forces sat under the Bench—that the Secretary of State, the Chancellor of the Exchequer, Lord Kinnaird, &c. &c. were present—when he takes into his view the crowd of the Court, and that even the Sons of the Attorney-General witnessed the torture of their father, he will be at no loss to conceive the condition to which that unfortunate man was reduced. But he brought it on himself—he was the architect of his own disgrace—the Court, unfortunately for him, did not apply the curb to his intemperate and outrageous career, and he was obliged, in consequence, to listen to that *which no Gentleman should hear.* Indeed it is the universal opinion, that the Attorney-General must go into retirement.

Such was the general effect of this speech, such were the sensations it caused in utterance. Upon the politics of it, we have nothing to remark. Those speak for themselves, trumpet-tongued, and have spoken to the Country in a language that has been felt in every Province, in every County, in the Kingdom. If upon the politics of the question, he was victorious, he was equally triumphant on the Law of the case, and the construction of the alleged Libel. Indeed the highest compliment that could be paid Mr. O'Connell, he has received from the abusive Libels heaped upon him by the Attorney-General's Press. If any thing were wanted to to stamp this speech with the character of extraordinary—if any proof were necessary to demonstrate its effect, that stamp would be supplied by the Hirelings—that proof would be furnished by the reeling fury, by the drunken ruffianism of the Creatures who gabble in the Common Council, and who scribble in the Castle Press. One man exclaims—[see the *Dublin Journal* of 7th August]—"that the Protestants of the Metropolis are frightened." No, Mr. Giffard, the Protestants (truly so called) are not frightened; they participate in the feelings which Mr. O'Connell's Speech has produced among the Catholics; they rejoice to find that the

Irish Bar is not yet reduced to the level of the mere British black-letter Lawyer; they hail the spirit, the energy, the dignified mode, in which Mr. O'CONNELL chastised the intemperance, and trampled upon the vanity, of an ATTORNEY GENERAL. They are glad to find that public feeling, that public effect, did not retire from the Profession, when Mr. CURRAN was called to preside in the Rolls; that there was still personal boldness left, and, what is more, political courage, to beard the insolence of Office, and to fling an indignant defiance in the teeth of the first Law Officer, who had the temerity to calumniate the views and politics of a great majority of his Countrymen. Protestants and Catholics are alike rejoiced, that the spirit of the Country, though it slept, has not departed with the act of Union; and that the Irish Bar, though verging fast into the character which has rendered that of England the ready instrument in the hand of Power, yet feels the vital spark of Liberty—the generous current of Patriotism animating the heart, in spite of every oppression, and circulating, in spite of every obstacle, through the better part of the Profession. Not able to meet the statements of Mr. O'CONNELL like men, the Mercenaries have, as usual, recourse to the low calumnies which have in a peculiar manner distinguished the DUKE OF RICHMOND'S Press; and stung to absolute madness by the triumphant exposure of the bigotry and weakness of Mr. Attorney-General, they talk of "hereditary atrocities, and recent, bold, treasonable criminalities of Popish Factions;" and add, that these atrocities, and so forth, should rouse "Protestant feeling and energy."—Poor Devils! this is the way, is it, to put down the Catholic Board, the Public Press, and JOHN MAGEE? What Protestant feeling, Mr. GIFFARD, do you mean? Not the genuine, tolerant, liberal feeling, which characterizes the true Protestant—No, though worthy Gentleman, you pant again for the riding house, the whip-cord, and the triangle—you wish to see the

bridges *graced* with trunkless heads—you wish to hear, once more, the yell of Orangeism and the groans of Torture resounding through the streets—you wish your corps, "the gallant Dundrum," on permanent pay, and you long to gloat your eyes on the naked and lacerated back of a Papist! Honest John! it will not do—the Ruffian boast of Orange Insolence may be rung in the public ear—the Walter Halls of the North may murder and be pardoned—but neither Protestant nor Catholic shall be tempted to resistance by your open violence or your secret plots. While there is an *Evening Post* in Ireland, while that *Post* maintains its unparalleled influence and circulation, all your well-fabricated machinations, all your well paid calumnies, all your phrenetic and rampant abuse, shall not stir up a single individual to resist the Legal Authorities, such as they are—or to deviate, by the slightest movement, from the path chalked out for Ireland by PRUDENCE, and the present circumstances of the world.

Of the SOLICITOR GENERAL; Proteus as he is in Principle, and Camelion as he is in Practice, we feel every disposition to speak with respect. He possesses an imposing style of character—and, if not always masterly, his views are generally plausible. His language, fluent and select, if it be deficient in intellectual vigour, is enforced to the mind of the many, by an energy and propriety of elocution, which, wherever Providence might cast his lot, would acquire for him, if the axiom of Demosthenes be correct, the character of an Orator. Though ambitious of poetical ornament, his imagination is that of rhetorician. But his taste is good, *in the general*, and it is impossible to hear him without pleasure.

On the present occasion, however, we own that he not only disappointed the Public but his Friends. His reply is given in the following sheets in a more correct and ample form than it has yet appeared. It is an eloquent harangue; but we must say, in-

common with the Public, that as Mr. BUSHE evidently lost his temper in delivering the speech, he was also deficient in many of those qualities, for which we so often, on other occasions, were compelled *reluctantly* to admire him. There was passion, and rhetoric, and legal knowledge; but the polished zeal, the richness of topic, the philosophical views, were altogether wanting. He was particularly *jejune*, we had almost said puerile, in his panegyric on his GRACE OF RICHMOND. We have no objection to well-turned compliments, though bestowed on the Duke himself, and we are free to acknowledge, that a man, even without flattery, might find some traits in his Grace's character to praise: but to talk of laurel wreaths, of the glories of an Augustus, and of a distant posterity holding him in veneration, borders so closely on the *bathos*, that we solemnly protest, had we not of Mr. BUSHE'S SINCERITY the most exalted opinion, we should be almost inclined to violate the decorum of the Court, and to exclaim, "*Cease your Funning.*"

The Chief Justice's Charge consisted only of a few words, which, as they were very indistinctly uttered, were only just audible, for we suppose they were, in the Jury Box. The style was that usually employed by Mr. DOWNES, nor did the Verdict of the Jury, disappoint, a single individual friend or enemy in the Court.

With regard to the mode in which Mr. MAGEE has been defended, he has only to reiterate the assurance he has so repeatedly expressed in his Paper, that the line of defence taken for him, that the topics upon which Mr. O'CONNELL has insisted, are precisely those he was instructed to adopt. Mr. MAGEE has identified himself with the Country; and the defence upon which he stood was that which would not only include his own justification, but stand as an argument in favour of this Persecuted Land. For what he may suffer in person, for the ordeal through which he may be destined to pass, he is fully prepared. Conscious

rectitude of intention, inflexible perseverance in the Cause of his native Country, hereditary Consistency—every thing—Principle—Honor—even WISDOM, which cannot exist without Honor and Principle, combine to render, under all circumstances, and in every variety of persecution, his public sentiments straight-forward, decided—THISH; his expressions of those sentiments open, unceasing, unalterable.

But what is to be the effect of this Trial, it will be asked by every considerate man? Mr. MAGEE is lodged in a Prison—that is one consequence. But surely a Government, conducted on the principle of vengeance, is the most wicked in point of fact, and in policy the most mischievous with which ever a Country was cursed. Meanly as we think of the Attorney General's understanding, and little as we value that *moderation*, as he is pleased to call it, which has thrown this Country into a state of distraction, we can scarcely even yet suppose him altogether so void of common sense, as not to perceive that the consequences which will grow out of the publication of this Trial will far overbalance any benefit which he imagined he might confer on Administration by the Prosecution.

And this topic leads us to another view of the impolicy and short-sightedness of the Attorney General and the Law Advisers of the DUKE OF RICHMOND.

The LIBERTY OF THE PRESS is a subject that is exhausted—at least it is a topic upon which our minds cannot fructify. We shall not therefore indulge in any general discussion of its advantages, nor shall we descant upon the wide range in which the Constitution allows it to operate. Neither do we mean to pen a dissertation on the Law of Libel; that *debateable border*, upon which, while there is freedom, so many literary and legal battles must be fought. Our object at present shall be practicable and plain. It is to demonstrate the total impoli y

and absolute uselessness of Government Prosecutions to coerce, or subdue the Press.

If freedom of discussion, whether oral or written, correspond with the practice and be clearly deducible from the principles of the Constitution; if the character impressed upon British Society can be traced, as, we think it may, to the popular nature of our Government; if to that character we owe not only our high tone of national feeling, but the imposing and enviable attitude of grandeur, which Britain has maintained among the nations; and finally, as growing from these premises, if it be right to preserve the Constitution of the Country and the Character of the People; a wise Administration should patronize discussion to its utmost latitude, even where it verges on the precincts of Licentiousness, where it mixes with the unhallowed elements of Anarchy, where it ventures even upon the forbidden ground of Sedition. If they are friends to the Constitution, it is their duty to protect the Press against the mischievous meddling of an Attorney General; if they are friends to their own places they will find it their interest to cherish the principles of freedom in political discussion.

Now, to exemplify these principles by resorting to the test of experience, a criterion to which the friends and enemies of Liberty are so anxious, on all occasions, to appeal. Let us, for a moment, consider, how a contrary conduct has operated upon popular publications; what benefit it has been to Government, even to *their tranquillity*, to declare a war against the Press, and how far the public peace has been preserved by the punishment of a Printer.

Not to revert to the period of the elder Charles, when men's ears are slit, and their persons exposed to the most horrible insults, for daring to animadvert on the conduct of his Ministers; we shall only observe, that the system pursued by that infatuated Monarch terminated in his own decapitation, and that some of the victims of the Crown Lawyers in his day were among the most active of those, who

brought his anointed head to the block. Neither shall we exemplify the doctrine we maintain by alluding to the State Prosecutions which preceded the dethronement of James the Second. We pass over the period of the Revolution, of the Hanoverian succession, and come to the reign of his present Majesty.

Did the prosecution against WILKES tend to render GEORGE III. more popular, or the People more contented?

Did the prosecution against JUNIUS allay the popular ferment?

Did the prosecution against HORNE TOOKE promote the cause of tranquillity and affection to the Ruling Authorities?

A reference to the History of those times will enable the Reader to reply in the negative. It will be better, however, to produce examples from our own immediate recollection, from those prosecutions which have, within those few years, attracted so considerable a degree of the public attention.

We begin with the first, or at least the most celebrated political writer of the age, Mr. Cobbett. What was this Gentleman's offence? a very clumsy, at least, a very open-handed and injudicious attack upon the German Legion, and certain crude and ill-considered sneers upon the Military Law; an attack which was unintelligble to the Foreigners, and a Libel, the coarseness of which, defeated its own object. In the voluminous publications of that celebrated writer, distinguished as they are for personality and virulence, as well as for ability and information, there is not to be found, perhaps, an article so heavy, a diatribe so dull, one so completely destitute of the talent, and energy, which are his general characteristics, as that of which he was accused and convicted, and for which he was condemned to Newgate. But have the fine and confinement operated favourably upon the Press? Has the example contributed to restrain its licentiousness on this particular point? or has Mr. Cobbett himself been less persevering and acute on this very subject? Let

the Trials of Mr. HUNT and of Mr. DRAKARD, and the recent Registers, answer to the question. The punishment, instead of acting as a preventative on others, or restoring Mr. Cobbett to a sense of his alleged transgression, has rendered the Military Code more than ever the topic of discussion. It has been treated of in every variety of form, and in almost every modification of language; Generals have written books upon the subject, paltry productions, when compared to the writings of Mr. COBBETT, but which are likely to be brought into some note by the notice taken of them in the late Trials, as well as by the more effectual mention bestowed on them by the periodical writers. The latter have eagerly seized upon the circumstances attendant on the Trial, renewed the subject with the most provoking zeal, and with a minuteness and pertinacity, which, if known to the soldiers, must necessarily tend to endanger the tranquillity of the State. It is true the writers deal not now in gross and angry abuse, they do not call the German Legion base and corrupt mercenaries, ready to turn their arms against their adopted Country; they do not call them cowards and cut throats; but they insinuate charges infinitely more gross. The insinuations are so broad, but yet so legal and so safe, that their misapplication and the conviction of authors are alike impossible. Hence, if there were mischief in the original Libel, that mischief must have been multiplied in a manifold and frightful degree by the subsequent publications. Hence although the alleged delinquent has been punished, the Law has been found inadequate. Nay, upon the occasion of Libels it is worse than nugatory. It has become a direct incentive to that crime for the punishment of which it was made. Like the produce of those horrid marriages mentioned in the mythology of the HINDOOS, the Libel Law has begotten upon the original Libel, a progeny of monsters, with all the power, publicity and vigour of the father, and with all the mischievous and deadly qualities of the other parent.

With regard to Mr. HUNT, who penned one of the most glaring, and, as we think, one of the most *Law-inviting* articles that was ever committed to the Press, upon the Prince Regent--how we ask, have the fine and confinement to which he was condemned operated upon his Paper, or upon the numerous tribe of Sunday Prints which infest and torment the Metropolis of the Empire? why, there is not a Sunday of the REGENT's Life, that his character is not gibbeted, that he is not held up to detestation, and that he is not trampled upon with a boldness, and to an extent, absolutely unexampled in the dramatic Libels of ARISTOPHENES, or in the graver and more malignant Volumes of PROCOPIUS.

The punishment of Messrs. HUNT, instead of stemming the tide of Libel, poured upon the Prince Regent from the hundred-mouthed Monsters of the Sunday Press, have given an impetus and virulence to their assaults which they would never have otherwise acquired.

Another instance of the total inefficacy of the Laws in preventing Libels, notwithstanding the proverbial rigor of the Judges, may be given in the case of Mr. WHITE. This Gentleman was confined three years in Dorchester Gaol, during all which time his Paper, *The Independent Whig*, teemed with the grossest abuse against the Royal Family; nor had he been liberated many months when his Son was convicted of the strangest Libel that perhaps ever appeared, namely, the charging of the DUKE OF CUMBERLAND with the Murder of his Servant, SELLIS.

From a number that occurs to us, we shall just allude to the case of Mr. FINNERTY. And, we would ask LORD CASTLEREAGH, if the punishment with which this Gentleman has been visited, his eighteen months imprisonment in Lincoln Castle, his privations, and his loss of health, caused any cessations of the assaults, which, from nearly the time when he entered into public life, until the present moment, have been levelled at his Lordship's personal and political character? It is true, Mr. FINNERTY

was not suffered to read the Affidavits he had collected in Ireland, when he was brought before the King's Bench for judgment, but he has found means however, to *publish* those Affidavits, by which the original alleged Libel is not only repeated, but given with the most torturing and minute aggravation. In short, whatever other defences Lord Castlereagh may have, the punishment of Mr. FINNERTY has not convinced a single individual out of the immediate circle of his Lordship's private or party friends, that he is guiltless of permitting all kinds of torment to be practised, during a certain period of his Government in Ireland; nor has the judgment of the Court prevented a re-publication, even *ad nauseam* of all the barbarities charged upon the Viceroyalty of the MARQUIS OF CAMDEN.

We shall conclude our instances with the case of Mr. HUGH FITZPATRICK, who is now suffering in Newgate for having printed a Book, entitled a STATEMENT OF THE PENAL LAWS, WHICH AGGRIEVE THE CATHOLICS OF IRELAND.

An unlucky note in this Book charged the DUKE OF RICHMOND'S GOVERNMENT with partiality, even in the dispensation of criminal justice, and mentioned, that a man of the name of BARRY had been hanged, who, if he happened to have been Protestant, was almost certain of a pardon.

It is totally unnecessary to discuss the question of BARRY's guilt or innocence. He may have been a Murderer, he may have been a Martyr—as it respects our argument, we care not which—but we do affirm that the practical effect caused by the trial, conviction and imprisonment of Mr. FITZPATRICK has been diametrically the reverse of those upon which the Government of the Country has calculated, or rather upon which, we should think, the Attorney General taught them to rely. BARRY is universally looked upon, falsely, we must presume—but

Incedo per ignes,
Suppositos cineri doloso——

and the Book is more read, and its facts more religiously believed, aye, *the note and all* than ever they were bef re, or than ever they would be, but for this most ill-advised and injudicious prosecution.

We now arrive at the consideration of the practical consequences which have arisen, and which are likely to arise from the prosecution of Mr. MAGEE.

If it were the object of the ATTORNEY GENERAL to lower the tone of *The Dublin Evening Post*, that Officer has most egregiously failed in his design.

If it were his intention to depreciate the character of Mr. MAGEE in public estimation, he has most miserably mistaken the road. The very virulence with which the ATTORNEY GENERAL attacked him has been answered by the Country in a language which Mr. MAGEE will never forget, and which will administer, on his sick bed, and in the solitude of his cell, that consolation, which his persecutors can never taste.

If it were the ATTORNEY GENERAL's object to wound the Catholic Cause through the sides of Mr. MAGEE, and to pronounce vulgar invectives in virtue of his station, upon the Catholic Leaders, never was man so signally defeated—never did the poisoned chalice return with more poetic justice to the lips of the accuser Indeed Mr. SAURIN will never recover from the effects of the draught.

If it were the ATTORNEY GENERAL's intention to justify the ADMINISTRATION OF THE DUKE OF RICHMOND, a reference to his Speech will shew how far he has succeeded. Perhaps such a Speech was never delivered by a man of ordinary cunning upon a similar occasion.

It is notorious that the ATTORNEY GENERAL has succeeded in no political object since he entered into Office. That he has benefited himself very splendidly, is apparent from the enormous emoluments of his Station, and from the celebrated Report of the Commissioners, which has charged him with receiving fees to an extravagant amount without giving value; but for the Government he has done nothing, except prosecuting the Catholic People

of Ireland, and carrying on a Crusade against the Press. Instead of tranquillizing the Country, he has lit a flame, which will demand all the sagacity and management of LORD WHITWORTH to allay.

Although Mr. RIDGEWAY, the Reporter for the Castle, took notes of this Trial, it has been deemed prudent, on the part of the ATTORNEY GENERAL, to have them suppressed. Considering indeed Mr. RIDGEWAY's employment, it could scarcely be expected, that he would preserve, at least, those parts of Mr. O'CONNELL's Speech, in which the ATTORNEY GENERAL receives so merited and dreadful a chastisement.—Such an instance of impartiality it would be absurd, and, perhaps, uncandid, to expect. It would be absurd to imagine, that a Book, published under authority, should contain and circulate the political and personal abasement of the First Law Officer of the Crown—an abasement, which "encompasses him round about," from which it is impossible he can ever rise; and it would be uncandid to expect, that Mr. RIDGEWAY should sacrifice the salary he enjoys, to the character of being an impartial Short-hand Writer. We, therefore, lay this Trial before the Country, and mean to propagate it in every part, not only of the British Empire, but of America. Nay, it shall go to the Continent, in the languages of France and Spain—EVERY MEMBER OF THE CORTEZ SHALL BE PRESENTED WITH A COPY; and thus, the most Catholic People in Europe will have an opportunity of judging how the Irish Catholics are treated at home It will also form a part of the State Trials, now publishing in London. The present age and posterity will there see an ATTORNEY GENERAL treated, in a manner that no ATTORNEY GENERAL ever was treated since the invention of the Office; and the world must acknowledge, that Ireland still, even in her degraded state, has Talent and Spirit, worthy a happier destiny.

THE INDICTMENT.

County of the City of Dublin, to wit. } THE Jurors of our Lord the King, upon their Oath, present, that JOHN MAGEE, late of Trinity-street, in the County of the City of Dublin, Printer, being a wicked and ill disposed person, and wickedly and maliciously contriving and intending to asperse, scandalize, and vilify his Grace the Duke of RICHMOND, Lord Lieutenant-General and Geneneral Governor of Ireland, and to bring the said Lord Lieutenant and his Government of Ireland into great scandal, hatred and contempt with his Majesty's Subjects in Ireland, on the 5th day of January, in the fifty-third year of the Reign of our said Lord the King, at Trinity-street aforesaid, in the County of the City of Dublin, in order to fulfil and bring to effect his most wicked and malicious intentions aforesaid, wickedly and maliciously did print and publish, and did cause and procure to be printed and published, in a certain Newspaper, entitled, *The Dublin Evening Post*, a certain wicked, malicious, and scandalous Libel, of and concerning the said Lord Lieutenant, and his Predecessors in the said office of Lord Lieutenant of Ireland, and of and concerning Ireland, and the Government thereof, and the People thereof, according to the tenor here following—that is to say, "Duke of RICHMOND," [meaning the said Lord Lieutenant]—"As the Duke of RICHMOND [meaning the said "Lord Lieutenant] will shortly retire from the Government of Ireland, it has been deemed necessary to take such "a Review of his Administration, [meaning the Administration of the said Lord Lieutenant,] as may at least warn "his Successors from pursuing the Errors of his Grace's "Conduct, [meaning the Conduct of the said Lord Lieutenant.]—The Review shall contain many Anecdotes of the "Irish Court, which were never published, and which were "so secret, that his Grace [meaning the said Lord Lieutenant] will not fail to be surprised at the sight of them in "a Newspaper.—If the Administration of the Duke of

"RICHMOND [meaning the said Lord Lieutenant] had been "conducted with more than ordinary talent, its errors might "in some degree, have been atoned for by its ability; and "the People of Ireland, though they might have much to "regret, yet would have something to admire: but truly, "after the gravest consideration, they must find themselves "at a loss to discover any striking feature in his Grace's "Administration, [meaning the Administration of the said "Lord Lieutenant] that makes it superior to the worst "of his Predecessors. They [meaning the Predecessors "of the said Lord Lieutenant] insulted, they oppressed, "they murdered, and they deceived. The profligate un-"principled WESTMORLAND, [meaning one of the Prede-"cessors of the said Lord Lieutenant in the said Office]—"the cold-hearted and cruel CAMDEN, [meaning one other "of the Predecessors of the said Lord Lieutenant in the said "Office]—the artful and treacherous CORNWALLIS, [mean-"ing one other of the Predecessors of the said Lord Lien-"tenant in the said Office,] left Ireland more depressed and "divided than they found her. They augmented the "powers of the Government, [meaning the Government "of Ireland,] both in the Military and Civil Branches; "they increased coersion and corruption, and uniformly "employed them against the Liberties of the People, "[meaning the People of Ireland.]—The consequence was, "the country [meaning Ireland] was regularly abandoned "to its old distraction, with whatever additional disgrace "the enduring a succession of bad Administrations heaps "upon the character of a Nation.—Since that period, the "complexion of the times has changed—the Country "[meaning Ireland] has advanced—it has outgrown sub-"mission—and some forms, at least, must now be observed "towards the People [meaning the People of Ireland.] "The system, however, is still the same; it is the old play, "with new decorations, presented in an age somewhat "more enlightened; the principle of Government—[mean-"the Government of Ireland] remains unaltered; a prin-"ciple of Exclusion, which debars the majority of the "People, [meaning the People of Ireland] from the en-"joyment of those privileges that are possessed by the "minority, and which must, therefore, maintain itself by "all those measures necessary for a Government founded "on injustice;"—in contempt of our said Lord the King and his Laws, and against the Peace of our said Lord the King, his Crown and Dignity.—And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said JOHN MAGEE being such person as afore-said, and wickedly and maliciously contriving and intend-ing as aforesaid, afterwards, to wit, on the said fifth day of

January, in the fifty-third year of the reign of our said Lord the King at Trinity-st. aforesaid, in the County of the City of Dublin aforesaid, in order to fulfil and bring to effect, his most wicked and malicious intentions last aforesaid, wickedly and maliciously did print and publish, and did cause and procure to be printed and published in a certain other Newspaper, entitled, *The Dublin Evening Post*, a certain other wicked, malicious, and scandalous Libel of and concerning the said Lord Lieutenant, and his Predecessors in the said Office of Lord Lieutenant of Ireland, and of and concerning Ireland and the Government thereof, and the People thereof, according to the purport and effect here following, that is to say, "Duke of RICHMOND, [meaning the said Lord Lieutenant] as the "Duke of RICHMOND [meaning the said Lord Lieutenant] will shortly retire from the Government of Ireland, "it has been deemed necessary to take such a review of his "Administration [meaning the Administration of the said "Lord Lieutenant] as may at least, warn his Successors "from pursuing the errors of his Grace's conduct [meaning the conduct of the said Lord Lieutenant.]—The "Review shall contain many Anecdotes of the Irish Court "which were never published, and which were so secret, "that his Grace [meaning the said Lord Lieutenant] will "not fail to be surprized at the sight of them in a Newspaper.—If the Administration of the Duke of RICHMOND [meaning the said Lord Lieutenant] had been "conducted with more than ordinary talent, its errors "might, in some degree, have been atoned for by its ability; "and the People of Ireland, though they might have much "to regret, yet would have something to admire; but "truly, after the gravest consideration, they must find "themselves at a loss to discover any striking feature in "his Grace's Administration [meaning the Administration "of the said Lord Lieutenant] that makes it superior to "the worst of his Predecessors. They [meaning the Predecessors of the said Lord Lieutenant in his said Office,] "insulted, they oppressed, they murdered, and they deceived. The profligate, unprincipled WESTMORLAND, "[meaning one of the Predecessors of the said Lord Lieutenant in his said Office]—the cold-hearted and cruel "Camden [meaning one other of the Predecessors of the said Lord Lieutenant in the said Office,]—the artful and "treacherous Cornwallis [meaning one other of the Predecessors of the said Lord Lieutenant in the said Office,] left "Ireland more depressed and divided than they found her; "—they augmented the Powers of the Government [meaning the Government of Ireland,] both in the Military and "Civil Branches, they increased Coersion and Corruption,

"and uniformly employed them against the Liberties of the "People, [meaning the People of Ireland,] the conse-"quence was, the Country [meaning Ireland] was regu-"larly abandoned to its old distractions, with whatever "additional disgrace the enduring a Succession of bad "Administrations heaps upon the character of a nation.—"Since that period, the complexion of the times has "changed, the Country, [meaning Ireland] has advanced, "it has outgrown submission, and some forms at least, "must now be observed towards the People [meaning the "People of Ireland.]—The System however is still the same, "it is the old play with new decorations, presented in "an age somewhat more enlightened. The principle of "Government [meaning the Government of Ireland,] re-"mains unaltered, a principle of exclusion, which debars "the majority of the People [meaning the People of Ire-"land,] from the enjoyment of those privileges that are "possessed by the minority, and which must, therefore, "maintain itself by all those measures necessary for a Go-"vernment founded on injustice,"—in contempt of our said Lord the King and his Laws, and against the Peace of our said Lord the King, his Crown and Dignity.—And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said JOHN MAGEE, being such person aforesaid, and wickedly and maliciously contriving and intending as aforesaid, to wit, on the fifth day of January, in the fifty-third year of the Reign of our said Lord the King, at Trinity-street aforesaid, in the County of the City of Dublin aforesaid, in order to fulfil and bring to effect his most wicked and malicious intentions last aforesaid, wickedly and maliciously did print and publish, and did cause and procure to be printed and published in a certain other Newspaper, entitled, *The Dublin Evening Post*, a certain other wicked, malicious, and scandalous Libel, of and concerning the said Lord Lieutenant and his Government of Ireland, and of and concerning the Predecessors of the said Lord Lieutenant in the said office of Lord Lieutenant, and of and concerning Ireland, and the People thereof, according to the tenor here following, that is to say,

"Although his Grace [meaning the said Lord Lieute-"nant of Ireland] does not appear to know what are the "qualities necessary for a Judge in Canada, or for an Aid-de-"Camp in waiting at a Court, he surely cannot be ignorant "what are the requisites for a Lord Lieutenant, therefore "were an appeal to be made to him [meaning the said Duke "of RICHMOND, Lord Lieutenant of Ireland] in a dispassion-"ate and sober moment, we might candidly confess, that "the Irish would not be disappointed in their hopes of a "Successor, though they would behold the same smiles, ex-

"perience the same sincerity, and witness the same dis-
"position towards conciliation. What, though they were
"deceived in 1795, and found the mildness of a FITZ-
"WILLIAM a false omen of Concord; though they were
"duped in 1800, and found that the Privileges of the
"Catholics did not follow the extinction of the Parlia-
"ment; yet at his departure, [meaning the departure of
"the said Lord Lieutenant,] he will, no doubt, state good
"grounds for future expectation, that his Administration
"[meaning the Administration of the said Lord Lieu-
"tenant] was not the time for Emancipation—but that the
"season is fast approaching—that there were existing cir-
"cumstances—but that now the People may rely upon the
"virtues even of an Hereditary Prince—that they should
"continue to worship the false Idol—that their cries at last
"must be heard, and that if he has not complied, it is only
"because he has not spoken. In short, his Grace [meaning
"the said Lord Lieutenant] will in no way vary from the
"uniform conduct observed by most of his Predecessors
"[meaning the Predecessors of the said Lord Lieutenant in
"the said office]—first preaching to the confidence of the
"People [meaning the People of Ireland] then playing
"upon their credulity [meaning the credulity of the Peo-
"ple of Ireland;]—he [meaning the said Lord Lieutenant,]
"came over ignorant, he soon became prejudiced, and then
"he became intemperate;—he [meaning the said Lord
"Lieutenant] takes from the People [meaning the People
"of Ireland] their money, he eats of their bread, and he
"drinks of their wine—in return, he [meaning the said
"Lord Lieutenant] gives them [meaning the People
"of Ireland] a bad Government [meaning the Government
"of Ireland by the said Lord Lieutenant] and at his de-
"parture [meaning the departure of the said Lord Lieu-
"tenant,] leaves them [meaning the People of Ireland]
"more distracted than ever. His Grace [meaning the said
"Lord Lieutenant] commenced his Reign [meaning his
"Government of Ireland] by flattery;—he [meaning the
"said Lord Lieutenant] continued it [meaning his Go-
"vernment of Ireland] in folly;—he accompanied it with
"violence, and he [meaning the said Lord Lieutenant]
"will conclude it [meaning his Government of Ireland]
"with falshood"—in contempt of our said Lord the King
and his Laws, and against the Peace of our said Lord the
King, his Crown and Dignity.—And the Jurors aforesaid,
upon their Oath aforesaid, do further present, that the
said JOHN MAGEE, being such person as aforesaid, and
wickedly and maliciously contriving, and intending as
aforesaid, afterwards, to wit, on the said fifth day of Ja-
nuary, in the fifty-third year of the Reign of our said Lord

the King, at Trinity-street aforesaid, in the County of the City of Dublin aforesaid, in order to fulfil and bring to effect, his most wicked and malicious intentions last aforesaid, wickedly and maliciously did print and publish, and did cause and procure to be printed and published in a certain other Newspaper, entitled, *The Dublin Evening Post*, a certain other wicked, malicious, and scandalous Libel of and concerning the said Lord Lieutenant, and his Government of Ireland, and of and concerning the Predecessors of the said Lord Lieutenant in the said office of Lord Lieutenant of Ireland, and of and concerning Ireland, and the People thereof, according to the purport and effect here following, that is to say,—" Although his Grace " [meaning the said Lord Lieutenant of Ireland] does not " appear to know what are the qualities necessary for a " Judge in Canada, or for an Aid-de-Camp in waiting at a " Court, he surely cannot be ignorant what are the requi- " sites for a Lord Lieutenant; therefore, were an appeal to " be made to him [meaning the said Duke of RICHMOND, Lord " Lieutenant of Ireland] in a dispassionate and sober mo- " ment, we might candidly confess that the Irish would not " be disappointed in the hopes of a Successor, though they " would behold the same smiles, experience the same sin- " cerity, and witness the same disposition towards concilia- " tion. What though they were deceived in 1795, and " found the mildness of a Fitzwilliam a false omen of " concord; though they were duped in 1800, and found " that the Privileges of the Catholics did not follow the " extinction of the Parliament, yet at his departure [mean- " ing the departure of the said Lord Lieutenant,] he will " no doubt, state good grounds for future expectation, " that his Administration [meaning the Administration of " the said Lord Lieutenant] was not the time for Eman- " cipation, but that the season is fast approaching, that " there were existing circumstances, but that now the Peo- " ple may rely upon the virtues even of an Hereditary " Prince, that they should continue to worship the false " Idol, that their cries must at last be heard, and that if " he has not complied, it is only because he has not spoken. " In short, his Grace [meaning the said Lord Lieutenant] " will in no way vary from the uniform conduct observed " by most of his Predecessors [meaning the Predecessors " of the said Lord Lieutenant in the said office,]—first, " preaching to the confidence of the People [meaning the " People of Ireland]—then playing upon their credulity, " [meaning upon the credulity of the People of Ireland.] " He [meaning the said Lord Lieutenant] came over igno- " rant—he [meaning the said Lord Lieutenant] soon be- " came prejudiced, and then, he [meaning the said Lord

"Lieutenant] became intemperate, he [meaning the said Lord "Lieutenant] takes from the People [meaning the People "of Ireland,] their money;—he eats of their bread, and "drinks of their wine, in return, he [meaning the said "Lord Lieutenant] gives them [meaning the People of "Ireland,] a bad Government, [meaning the Government "of Ireland by the said Lord Lieutenant,]—and at his "departure, [meaning the departure of the said Lord "Lieutenant,] leaves them [meaning the said People "of Ireland] more distracted than ever. His Grace "[meaning the said Lord Lieutenant] commenced his "reign [meaning the Government of Ireland] by flattery—"he [meaning the said Lord Lieutenant] continued it "[meaning his Government of Ireland] in folly—he accom-"panied it with violence, and he [meaning the said Lord "Lieutenant] will conclude it [meaning his Government of "Ireland] with falshood"—in contempt of our said Lord the King and his Laws, and against the Peace of our said Lord the King, his Crown, and Dignity. And the Jurors, aforesaid, upon their oath aforesaid, do further present, that the said JOHN MAGEE, being such person as aforesaid, and wickedly and maliciously contriving and intending as aforesaid, afterwards, to wit, on the said 5th day of January, in the fifty-third year of the Reign of our said Lord the King, at Trinity-street aforesaid, in the County and City of Dublin aforesaid, in order to fulfil and bring to effect his most wicked and malicious intentions last aforesaid, wickedly and maliciously did print and publish, and did cause and procure to be printed and published in a certain other Newspaper, entitled, *The Dublin Evening Post*, a certain other wicked, malicious, and scandalous Libel, of and concerning the said Lord Lieutenant and his Government of Ireland, and of and concerning the People of Ireland, according to the tenor and effect following—that is to say, "he [meaning the said Lord Lieutenant] came over ignorant "—he [meaning the said Lord Lieutenant] soon became "prejudiced, and then he [meaning the said Lord Lieutenant] "became intemperate—he [meaning the said Lord Lieute-"nant] takes from the People [meaning the People of Ire-"land] their money—he eats of their bread, and drinks of "their wine—in return, he [meaning the said Lord Lieute-"nant] gives them [meaning the People of Ireland] a bad "Government [meaning the Government of Ireland, by the "said Lord Lieutenant]—and, at his departure, [meaning "the departure of the said Lord Lieutenant] leaves them "[meaning the People of Ireland] more distracted than ever. "His Grace [meaning the said Lord Lieutenant] commenced "his reign [meaning his Government of Ireland] by flattery "—he [meaning the said Lord Lieutenant] continued it

" [meaning his Government of Ireland] in folly—he ac-
" companied it with violence, and he [meaning the said
" Lord Lieutenant] will conclude it [meaning his Govern-
" ment of Ireland] with falshood"—in contempt of our said Lord the King and his Laws, and against the Peace of our said Lord the King, his Crown and Dignity.—And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said JOHN MAGEE, being such person, as aforesaid, and wickedly, and maliciously contriving and intending, as aforesaid, afterwards, to wit, on the said 5th day of January, in the fifty-third year of the Reign of our said Lord the King, at Trinity-street aforesaid, in the County of the City of Dublin aforesaid, in order to fulfil and bring to effect his most wicked and malicious intentions last aforesaid, wickedly and maliciously did print and publish, and did cause and procure to be printed and published, in a certain other Newspaper, entitled *The Dublin Evening Post*, a certain other wicked, malicious, and scandalous Libel, of and concerning the said Lord Lieutenant, and his Government of Ireland, and of and concerning the People of Ireland, according to the purport and effect here following, that is to say, " he [meaning the said Lord
" Lieutenant] came over ignorant—he [meaning the said
" Lord Lieutenant] soon became prejudiced, and then
" he [meaning the said Lord Lieutenant] became intem-
" perate;—he [meaning the said Lord Lieutenant] takes
" from the People [meaning the People of Ireland]
" their Money, he eats of their Bread and drinks of their
" Wine, in return he [meaning the said Lord Lieutenant]
" gives them [meaning the People of Ireland] a bad Govern-
" ment, [meaning the Government of Ireland by the said
" Lord Lieutenant]—and at his departure, [meaning the de-
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" flattery—he [meaning the said Lord Lieutenant] con-
" tinued it [meaning his Government of Ireland] in folly—
" he accompanied it with violence, and he [meaning the
" said Lord Lieutenant] will conclude it [meaning his
" Government of Ireland] with falshood"—in contempt of our said Lord the King and his Laws, and against the Peace of our said Lord the King his Crown and Dignity.—And the Jurors aforesaid, upon their Oath aforesaid, do further present, that the said JOHN MAGEE being such person as aforesaid, and wickedly and maliciously contriving and intending as aforesaid, afterwards, to wit, on the said 5th day of January, in the 53d year of the Reign of our said Lord the King, at Trinity-street aforesaid, in

the County of the City of Dublin, in order to fulfil and bring to effect his most wicked and malicious intentions, last aforesaid, wickedly and maliciously did print and publish, and did cause and procure to be printed and published, in a certain other Newspaper, entitled *The Dublin Evening Post*, a certain other wicked, malicious, and scandalous Libel, of and concerning the said Lord Lieutenant and his Government of Ireland, of the tenor and effect here following, that is to say, "had he [meaning the said Lord Lieu-
"tenant] remained what he first came over, or what he
" afterwards professed to be, he would have retained his
"reputation for honest, open hostility, defending his poli-
"tical principles with firmness, perhaps with warmth, but
"without rancour—the supporter, and not the tool of
"Administration—a mistaken politician, perhaps, but an
"honorable man, and a respectable Soldier—his Party wou'd
"have been proud of him, his Friends would have praised,
"(they need not have flattered him) and his Enemies, though
"they might have regretted, must have respected his con-
"duct; from the worst quarter there would have been
"some small tribute of praise, from none any great por-
"tion of censure; and his Administration, [meaning his
"Government of Ireland] though not popular, would
"have been conducted with dignity, and without offence.
"This line of conduct he [meaning the said Lord Lieute-
"nant] has taken care to avoid—his original character for
"moderation he has forfeited—he can lay no claim to any
"merits for neutrality, nor does he even deserve the cheer-
"less credit of a defensive operation. He has begun to act,
"he has ceased to be a dispassionate Chief Governor,
"who views the wickedness and the folly of Faction with
"composure and forbearance, and stands, the Represen-
"tative of Majesty, aloof from the contest; he [meaning
"the said Lord Lieutenant] descends, he mixes with the
"throng, he becomes personally engaged, and, having lost
"his temper, calls forth his private passions to support his
"public principles—he is no longer an indifferent Viceroy,
"but a frightful Partisan of an English Ministry, whose
"base passions he indulges, whose unworthy resent-
"ments he gratifies, and on whose behalf he at present
"canvasses,"—in contempt of our said Lord the King, and his Laws, and against the Peace of our said Lord the King, his Crown and Dignity, and the Jurors aforesaid, upon their oath aforesaid, do further present, that the said JOHN MAGEE, being such person aforesaid, and wickedly and maliciously contriving and intending as aforesaid, afterwards, to wit, on the said fifth day of January, in the fifty-third year of the reign of our said Lord the King, at Trinity-street, aforesaid, in the County of the City of

Dublin aforesaid, in order to fulfil and bring to effect his most wicked and malicious intentions last aforesaid, wickedly and maliciously, did print and publish, and did cause and procure to be printed and published in a certain other Newspaper, entitled *The Dublin Evening Post*, a certain other wicked and malicious and scandalous Libel, of and concerning the said Lord Lieutenant, and his Government of Ireland, of the purport and effect here following: that is to say, "had he [meaning the said Lord Lieutenant] remained what he first came over, or what he afterwards professed to be, he would have retained his reputation, for honest open hostility, defending his political principles with firmness, perhaps with warmth, but without rancor—the supporter, and not the tool of an Administration, a mistaken Politician perhaps, but an honorable Man, and a respectable Soldier, his Party would have been proud of him, his Friends would have praised (they need not have flattered him,) and his enemies, though they might have regretted, must have respected his conduct, from the worst quarter there would have been some small tribute of praise from none any great portion of censure, and his Administration [meaning his Government of Ireland] though not popular, would have been conducted with dignity and without offence—this line of conduct, he [meaning the said Lord Lieutenant] has taken care to avoid, his original character for moderation he has forfeited, he can lay no claim to any merits for neutrality, nor does he even deserve the cheerless credit of defensive operations—he has begun to act—he has ceased to be a dispassionate Chief Governor, who views the wickedness and the folly of Faction with composure and forbearance, and stands, the Representative of Majesty, aloof from the contest. He [meaning the said Lord Lieutenant] descends—he mixes with the throng—he becomes personally engaged, and, having lost his temper, calls forth his private passions to support his public principles—he is no longer an indifferent Viceroy, but a frightful Partisan of an English Ministry, whose base passion he indulges, whose unworthy resentment he gratifies, and on whose behalf he at present canvasses"—in contempt of our said Lord the King and his Laws, and against the Peace of our said Lord the King, his Crown and Dignity.

A True Bill,

For Self and Fellow Jurors,
JOHN EXSHAW,
Foreman.

A True Copy,

W. BOURNE,
D. Clerk Crown.

COURT OF KING'S BENCH.

MONDAY, MAY 31, 1813.

The King, at the Prosecution of the Duke of Richmond, against John Magee.

Mr. *Phillips*, on the behalf of the Defendant, said, he rose in this case to move the Court, that the Trial of this issue, of which notice had been served for Wednesday, the 2d of June, should be postponed until some day in next Term, or until such other time as to their Lordships it might seem meet.—Mr. Phillips said, that he grounded his motion on the Affidavit of Mr. Magee, which would, he hoped, be found sufficiently direct and ample to ensure the success of his application. The Affidavit stated, that Sir Charles Saxton, the Right Hon. W. Wellesley Pole, the Right Hon. W. Fitzgerald, and the Right Hon. Robert Peele, were, as he was advised and believed, material witnesses on his part. It also stated, that when he was served with a process in the cause, he immediately directed his Agent, Mr. Whister, to write to those Gentlemen, and give them every notice that it was likely their attendance would be required, and that immediately after he was served with the final notice of Trial, he issued Crown Summonses, and had them served upon those Gentlemen. They were, however, Members of the Imperial Parliament, and their privilege protected them from the process of the Court during the period of the Session. Every hope was, however, entertained that they would attend at its termination. "And, in order to shew your Lordships (continued Mr. Phillips) that this hope is not illusory, I will read to the Court the

very courteous and polished answer of the Right Hon. W. Fitzgerald to Mr. Whistler's application."

"*Great George's-street, Westmerland, May, 1, 1818.*

"SIR,

"I beg to acknowledge the receipt of your Letter, of the 24th April, and to apologize at the same time for not having answered it on the day on which I received it, being precluded by the press and hurry of business. I thank you for the civility which induced you to give me a previous intimation of Mr. Magee's intention to summon me to give evidence, on the expected Trial in Dublin, I am at a loss, I confess, even to conjecture what testimony I can give upon the subject of that Trial, which can either serve or disserve your Client; of that, however, his legal advisers are the better qualified to judge, and it being my duty to attend his summons, I shall not complain of any personal inconvenience to myself, which might arise from my being called over at this season to Ireland—you will be sensible, however, that at the period of the Session of Parliament, when the Public Business, for which I am responsible, particularly the Financial Measures connected with Ireland, are in their progress through the House of Commons, it is possible I may be detained here, involuntarily, by the obligations of my public duty. If it should appear to Mr. Magee that any testimony of mine can be of any avail to him; and that I should, notwithstanding, be prevented from appearing at the Trial, I assure you, unaffectedly, I shall regret such a prevention extremely, being at the same time fully assured that you will not have the summons served upon me, if, upon inquiry, you shall be induced to think that, without prejudice to your Client's interest, my presence may be dispensed with. I have written in great haste, being anxious, as no Post leaves London to-morrow, to acknowledge your Letter without any further delay.—I have the honor to be, Sir,

"Your very obedient Servant,

"WILLIAM FITZGERALD."

"*Gabriel Whistler, South Frederick-street, Dublin.*

Such, My Lords, is the Document on which I ground my motion, and I humbly submit that it is unanswerable. I cannot, however, anticipate, that any answer is intended, because it seems quite impossible that his Majesty's Attorney General, and the Crown Prosecutors, will seek to hurry on a State Prosecution, when the Traverser swears

the material witnesses for his defence are absent. It is plain that we have used even more than ordinary diligence to procure them, for even before we served them with Crown Summonses, they had an intimation from us that their attendance would be requisite, an intimation which was quite gratuitous on our part. The motion is quite at the discretion of the Court—there are no cases to controul their decision, and I have no doubt that they will consent to a delay by which justice will not only not be obstructed, but be materially advanced, for surely if there be one principle in our Law more mercifully imperative than another, it is that which ordains that an accused person shall have every opportunity of proving his innocence.

The COURT.—Is this opposed?

Mr. *Attorney General.*—Yes, my Lords, I feel myself bound to oppose this application. I do not, indeed, see why it should be granted—the Witnesses are all persons more or less connected with the Government of Ireland, and, even if they were here, could not be well examined. I declare, in *my conscience*, that, if I thought they would avail Mr. Magee, I would consent to the delay—but we do not know for what purpose they are sought, unless, indeed, it be to disseminate more slander on the Trial than the original Libel—a course which, if pursued, would effectually put a stop to any State Prosecution at all. I would make no frivolous objections, but I feel bound to state, that these Gentlemen were not offered their *viaticum*.

The COURT.—Oh, we will not give that any weight in such a case as this.

Mr. *Attorney-General.*—Well, my Lord, the case of the King against the Chevalier D'Eon, I think, will control your Lordships.

Mr. *Phillips.*—My Lords, I have read that Case; it is not at all in point. The Witnesses there were Foreigners, quite out of the jurisdiction of the Court; they were residents in France, and

there could be no reasonable hope of their attendance.

The COURT.—Certainly none—we grant the Motion.

Mr. *Phillips.*—I thank your Lordships; but I feel myself called upon instantly, on the part of myself and my learned Colleagues, to repel the insinuation which has fallen from the Attorney-General. He has thought proper to say, he could see no purpose which these Witnesses could answer, except the dissemination of worse slander than the Libel itself. My Lords, it was a most unwarrantable Libel upon Mr. Magee's Counsel. We are not simple enough to tell Mr. Attorney, before-hand, what we mean either to prove or disprove; but we tell him this—that he never should have hazarded the expression which he did, and which will, I trust, meet with no other notice than the discredit and discountenance it deserves.

Motion granted.

COURT OF KING'S BENCH.

WEDNESDAY, JULY 7, 1813.

The KING, *at the Prosecution of the* DUKE *of* RICHMOND, *against* JOHN MAGEE.

MOTION TO POSTPONE TRIAL.

Mr. FINLAY, on part of the Defendant, addressed the Court as follows:—My Lords, in the case of the KING against MAGEE, I am humbly to move your Lordships, that the Trial in this cause be further deferred. The scope of this Motion will be more apparent, by adverting to the notice of this application, which we have duly served on the Crown Solicitor:

"Take Notice, that Counsel on behalf of the Defendant will, on Wednesday next, move the Court that the Trial of the Issue in this Cause, of which Notice has been served for Monday, the 12th day of July instant, may be postponed until some day in the next Michaelmas Term, or the Sittings after, or for such other day as the Court shall think proper to appoint, which Motion will be grounded on the Affidavit of the said JOHN MAGEE, formerly filed in this Cause, and a further Affidavit of the said JOHN MAGEE, this day filed in the proper Office, the nature of the Case and reasons to be offered by Counsel.—Dated this 5th day of July, 1813."

Your Lordships will perceive, that this application is grounded on two Affidavits of Defendant; the first made on the late similar and successful application to this Court on this subject; the second, an additional Affidavit made on this second application. The second Affidavit is a short one, and contains all the material grounds on which we rely for the second postponement of the Trial in this cause. It states—

"That Deponent is advised and believes, that Sir Charles Saxton, Bart. the Hon. William Wellesley Pole, the Right Hon. Robert Peele, and the Right Hon. William Fitzgerald, are material Witnesses for Deponent on his Trial in this cause, without whose testimony Deponent *cannot safely proceed to Trial*—and saith, that he is informed and believes, that said Sir Charles Saxton, William Wellesley Pole, Robt. Peele, and William Fitzgerald, are Members of the House of Commons, and have been for some time past, and are now residing in the City of London, and in attendance on their Parliamentary duties—and saith, that notice having been served, on the 30th day of June last, on Deponent, by the Crown Solicitors, that the Trial in this cause would be brought on on Monday, the 12th day of July instant. A Subpœna *ad testificandum* was, on said day, issued out of the Crown side of this Honorable Court, on the part of Deponent, and directed to the said Sir Charles Saxton, William Wellesley Pole, Robert Peele, and William Fitzgerald, requiring them to appear on said 12th day of July, for the purpose of giving evidence, on behalf of Deponent on said Trial; and which Writ or Process was, on the 30th day of June, sent to London, for the purpose of being served on said Sir Charles Saxton, William Wellesley Pole, Robert Peele, and William Fitzgerald—and saith, that Gabriel Whistler, Deponent's Attorney, at the request of Deponent, also wrote Letters to them respectively, earnestly soliciting their attendance at said Trial.

"Saith, that from a Letter written by said William Fitzgerald to said Gabriel Whistler, and set out in the Affidavit of Deponent, made in this cause, and sworn the day of May last, and filed in the proper Office, to which Deponent humbly begs leave to refer, he has every reason to apprehend, not only said William Fitzgerald, but also said William Wellesley Pole, Sir Charles Saxton, and Robert Peele, will not attend said Trial on the 12th day of July, inasmuch as the Sessions of Parliament will not be closed, as Deponent believes; and that Deponent is advised and believes, that Deponent cannot enforce their attendance for that purpose by any Process of this Court during the Session of Parliament; but saith, he is in hopes of procuring their attendance against the next Michaelmas Term; and saith, that this application is not made *for the purpose of any unnecessary delay*."

Suffer me to request the attention of the Court to the *form* and *substance* of this Affidavit. I submit that its *form* is entire, regular, and sufficient.

Four requisites are especially necessary in an affidavit, to induce your Lordships to postpone a

Trial. It must shew that the Witnesses are *absent*, and *material*—that the *Defendant* expects their return within a reasonable time, and has exerted all his endeavours for the procurement of their testimoney—all these must be sworn by the Defendant—all these *have been* sworn by the Defendant. And when all these are so sworn, and uncontroverted, the Bench have *always* yielded to the application.

In reference to the *substance* of this Affidavit, it sets forth that Sir Charles Saxton, the Right Hon. W. W. Pole, the Chancellor of the Irish Treasury, and Secretary of the Irish Government, are absent on their Parliamentary duty, are material to the defence, inasmuch as the Affidavit sets forth that Defendant cannot safely go to Trial without them—that their return is soon expected, for instance, immediately after the Sessions of Parliament, and that every exertion had been made to procure their attendance, inasmuch as process requiring their presence, was instantly forwarded by the Defendant, on the very day upon which he received notice of Trial, that is, as soon as possible.

Therefore I submit, that in *form* and *substance* our Affidavit is full and satisfactory. Your Lordships will perceive, that the grounds of this application are exactly the same as those of the former. On the last day of last Term, the same application was made by us to the Court, on exactly the same merits, and, after Mr. Attorney General had been heard at length in resistance to our Motion, it was the *unanimous* opinion of this Court that there was no *valid* objection to our application, and the Trial was deferred accordingly until this Term. The interval of time has not varied in any respect the grounds of the Motion. The same difficulties still exists respecting the procurement of the *necessary* evidence. These difficulties will soon vanish—but until they do, it is our humble prayer, that no impatience to accele-

rate this Trial, may operate to defeat the ends of Justice: by bringing us to the Bar unprepared for our defence.

An Affidavit has been put in on behalf of the Prosecution, and a very extraordinary Affidavit it is, perhaps the most extraordinary Affidavit that ever was submitted to a Court of Justice. It argues no small degree of simplicity in the Crown Solicitors, to have thrown *such* an Affidavit into this Court—. It is sworn by one JAMES MURPHY, but who this James Murphy is, or what he is, or where he is, or what he has to do with this Court, or this Cause, on all these subjects of reasonable curiosity on our part, the said James Murphy leaves no room for speculation—no ground for conjecture. I thought it had been usual with every man who calls on a Court of Justice to give credit to his oath, to tell them, in the first instance, who he is, and what he is, and where he lives—I do not mean the city wherein he resides, but the place in which he resides. Did your Lordships—did any man in this Court ever see an affidavit commencing without *any description* of the man who swears it? Did you ever see any affidavit with such an omission, except the present one? Is it not a Rule of Law, and an invariable custom with Courts of Justice that all affidavits should open with some description of the deponent? Is not this rule and custom reasonable and *necessary?* Is it not reasonable to know something of the character, where you are called upon to give full credit to the man? If there be no description that can guide to his individuality, how could you prosecute him, suppose he committed perjury?

Some description of deponent has always been held reasonable and necessary. This person announces himself to the Court as "James Murphy *of the City of Dublin*," but farther, as to himself, Deponent saith not. James Murphy of the City of Dublin—very magnificent and unsatisfactory.—This description is nearly as definite as the reply of

an Irish Gentleman to a London Shopkeeper, inquiring his address—" I am (said the Irish Gentleman) Mr. Blake, *of Galway.*" " Of Galway"—Mr. Blake, of Galway, is a very sweeping description—but it is much more definite than Jemmy Murphy of the City of Dublin—could any man in Dublin undertake to say who is James Murphy of the City of Dublin? is it not my right, and one of my great protecting rights, to prosecute a man who may bear " false witness" against me; but, if such Affidavits as this can find their way into this Court, the protection is gone; for how can I prosecute a man under the description of Jemmy Murphy, of the City of Dublin? Should not the Deponent have some connexion with the Court, or the Cause? What connexion has this man with this Court, or this Cause?—has he any?—what is it?—how does it appear? He has not any, for none does appear. It shou'd not be received; but, if it will be received; if the public time must be thus abused, listen, for a moment, to the matchless nonsense of Jemmy Murphy, *of the City of Dublin*:

" JAMES MURPHY *of* the City of Dublin, maketh Oath, and saith, he hath read a Copy of an Affidavit made in this cause by the Defendant, JOHN MAGEE, on the 5th day of this present July, as this Deponent believes—This Deponent saith, that the Publication which the Defendant is, in the Indictment in this Cause, charged with having printed and published, was, as this Deponent believes, published in a Newspaper called the *Dublin Evening Post*, of which the Defendant is, as this Deponent believes, the Proprietor, on or about the 5th day of January last past.—And saith, he believes that the Right Honorable William Wellesley Pole and Sir Charles Saxton, Baronet, in Defendant's said Affidavit named, departed from Ireland before the said day of Publication, and have *not*, nor hath either of them since returned thereto, and that they both now RESIDE ALTOGETHER in Great Britain.—And this Deponent saith, that *neither the said William Wellesley Pole nor the said Sir Charles Saxton, hath any residence* in Ireland as this Deponent believes.—And this Deponent saith, he heard and believes that the Right Honorable Robert Peele, and the Right Honorable William Fitzgerald, in Defendant's said Affidavit named, expect and intend, and are likely to be in Dublin on the 12th day of

this instant, July, or in a few days after the said day—and to remain in Ireland for some months after their said arrival therein.—Sworn before me, this 6th day of July, 1813.

JAMES MURPHY. R. DAY.

Such is the notable and unprecedented Affidavit of Jemmy Murphy, of the City of Dublin. This deposition-monger, in the brazen mask, takes care of himself, though he may not of his conscience. His Affidavit is a curious combination of craft and nonsense; it is a formula for every wretch, who lives by the labour of his conscience; it is a precedent for every perjurer; it is a security against the penalties of false swearing; he conceals his individuality, and confines his deposition to *his belief*. Under such a formula, any man may swear falsely, for it baffles detection; and, even after detection, it eventually insures escape from punishment.—I don't impute perjury to Deponent, but I have proved him to be a man of cunning, and I will now prove him to be a fool—and, if I don't prove him to be a fool, I shall not ask to take any thing from my Motion.

He swears that he has heard much, which, of course, he considers prejudicial to the success of this application. Every thing he has heard, bears against us in his view. He swears that he has heard much, and he swears that he believes every thing that he heard.

This "Jemmy" of the City of Dublin, undertakes to describe the present circumstances, and future movements of the present and late first Political Functionaries of Ireland, of the *present* Chancellor of the Exchequer and the *late* Chancellor of the Exchequer, of the *present* Secretary of State for Ireland, and the *late* Secretary of State, and the late Under Secretary of State. He gives you on his oath, some of the circumstances of their private life, and their *future* public movements. He prophecies their movements—he *prophecies*, and he has this advantage over all other prophets, for Jemmy prophecies on his oath. He swears that Mr. Pole and Sir Charles Saxton, the late Government of Ireland (as the phrase) have *no residence in Ireland.* He swears that they cannot be in Ireland, for that "they reside altogether in England—that they will not be in Ireland—that two Irish Members, a County Member and a City Member—the Member for the City of Cashel, and the Member for the Queen's County, reside altogether in England, and have no residence in Ireland." Having given you, on his oath, his Creed, as to existing facts, he proceeds to give you his second sworn Creed in respect to futurity—he swears, that our Chancellor of the Exchequer and Secretary of State are likely to be here on the 12th instant, or a few days after. He does not

even qualify the prophecy by saying, "wind and weather permitting"—he releases these *future* travellers from all the accidents and delays of land and water—wind and weather—time and tide—sickness and business; and he kindly and confidentally lands them at the Pigeon-house, on or about the 12th of July next ensuing. On his oath he differs in opinion with the Speaker of the House of Commons. The Speaker thinks that the Members cannot be released from the public business before the 16th; but Jemmy Murphy of the City of Dublin, swears that they may be here, and are likely to be here, on the 12th; and he not only prophecies their arrival, but, in curious coincidence between prediction and event, he fixes their future arrival on or about the very day, upon which the Crown Solicitor has given notice for the Trial of our Client.

Having thus given you his sworn creed, with respect to facts that may exist, and to facts which could not yet have existed; he finally outdoes himself, and he swears to that which does now exist *in the mind* of our Chancellor and Secretary of State now in London: he gives you his sworn creed as to their *intentions an expectations*—they *intend* so and so, and they *expect* so and so. So speaks and swears this *omniscient* Deponent, produced to accelerate the Trial of JOHN MAGEE, and drag him to the Bar in the absence of his Witnesses. *Oh! Jemmy Murphy! Jemmy Murphy!—How does it happen that you know every thing about every body, and that nobody knows any thing about you!*

Is this the new ground upon which the Crown relies?—Is this the reason which will be now submitted to the Court of King's Bench by his Majesty's Attorney General, to persuade your Lordships to set aside your own late unanimous determination? In the face of decency—in the hearing of them of common sense, will they resort to this document?—Will they affect to lean on this miserable prop?—Will they insult the understanding of a Court of Justice by this flimsy exhibit of craft and folly? If they do—if they dare, *shame* upon them—*shame* upon them. A Trial is fixed for the 12th—we want to have our Witnesses—we wish not to be tried on the 12th, because we cannot have our Witnesses on the 12th. Will the Attorney General say, that we should be tried on the 12th, when the Affidavit, which he produces says, that the Witnesses are likely to be here on the 12th, *or a few days after*—when the Affidavit, which he produces says, that they are likely to be here a few days after?—"a day after the Fair."

To this non-descript Deponent, I have imputed nothing but craft and folly—nothing at all against his veracity—I believe him, on the contrary, to be a man of veracity, because he declined to swear up *to the mark*—up to the 12th,

I have acted thus towards a man whom none of us know, and has found his account in concealing his description. I regret, sincerely regret, that his Majesty's Attorney-General did not, on the last application, extend similar forbearance towards the character and veracity of Mr. MAGEE—a man generally known, and against whose veracity no imputation was ever yet uttered, except from the lips of his Majesty's Attorney General.

I lay down this position—the Oath of any man is entitled to protection in a Court of Justice, until its veracity is impugned by another Affidavit—or by the internal evidence of itself. In a case where there are conflicting or many Affidavits, 'tis the Lawyer's right to measure the relative credit due to each by argument or comparison, and to throw out an imputation against veracity, where the variance appears—but where there is but one Affidavit—and that uncontradicted by those who had the inclination and opportunity to contradict it by another, if they could—that affidavit coming from a man of property, respectability and untarnished character—that affidavit should not be impugned in its veracity on the *mere word* of any man living—not even on the opinion of the "wisest man in the world." The Court could not impugn it; and if they feel themselves covered from such a conduct, why should any Lawyer presume to exercise such a cruel tyranny on the character of another? It is too much the custom with Barristers; but it is a vicious custom—a crying injustice—a custom "more honored in the breach than the performance" The Attorney-General should have been slow to give the sanction of his station to this professional evil—why did he *presume* to say on the last day of last Term, when there was no Affidavit before you, but the one of Mr. MAGEE—why did Mr. Saurin presume to say, that Mr. MAGEE was guilty of rash swearing—Is not the oath of Mr. MAGEE, to a fact in his own knowledge, and an opinion in his own mind, paramount to the *word* of Mr. Saurin, or any man.

What was this fact and opinion, to which Mr. Saurin inconsiderately applied the harsh epithet of rash swearing—it was this—"I am advised, and believe, that their testimony is material."—"This is rash swearing," said Mr. Saurin.—Was the rashness of swearing, as to the fact of our giving him the advice, or as to his opinion in believing the advice to be good? I tell Mr. Saurin, with respect, but without hesitation, that any man among these professional advisers—that the humblest man amongst them would be as incapable of advising a man to take a rash oath as Mr. Saurin himself; and I tell him in the hearing of this crowded Court, in the hearing of the Bench and Bar, in the Public hearing, and to his own face, that, in the purest hour of his life, he was as capable of swearing a rash oath, as the man against

whom he directed the unworthy and groundless imputation. My Lords, one grand distinction exists between our case and any others which can be cited on the other side.—They are all included in the case of the Chevalier D'Eon, 3d Eur. and the distinction is this—the persons whose testimony were then sought for, were foreigners, or out of the kingdom, and unlikely to return—they were out of the process of the Court. Our Evidences are within the process of this Court. The process does not work now, because it is resisted by the Privilege of Parliament. That Privilege expires with the Session, and then your Process becomes imperative again. In the other case, it was unlikely that the Witnesses would come to the Country; in our case, it is almost certain that they will come, and come soon—and, if they will not, we can compel them.—I shall trouble you with but one case; it is the best I could cite; it is the late unanimous decision of yourselves, in a case not only similar, but the same. It is not insinuated that we desire to escape Trial, and we have sworn that we do not. In resisting the Attorney General, you will at the same time comply with the law, extend Justice to us, and preserve the consistency of your own decisions.

Mr. *Attorney General.*—In truth, my Lords, this is an idle, and a silly application—It is an attempt to interrupt the progress of Justice, and to postpone the punishment due to a flagitious, and seditious, and abominable Libel. The object of this Motion is quite plain, and the Court cannot, and will not, have any hesitation in refusing it. I never could have any objection to any reasonable postponement of the Trial, which I have fixed for the 12th instant, and upon that day I am determined to proceed with it, and to bring the Defendant to the condign punishment he deserves. My Lords, in plain truth, this is a most abominable Libel. The Defendant, Magee, is charged by this Indictment, at my prosecution, with having published it as the Printer and Proprietor of a public Newspaper, which, like all the Newspapers of the present day, has become the vehicle of slander, and defamation, and detraction. One cannot, my Lords, take up one of those Papers without being shocked with the odious and abominable trash, with which they assail every vir-

tuous and honorable character in the land, and traduce and villify the Government of the Country, and disparage the wisest Administration, and the most humane Governors. My Lords, you will be shocked to hear that the Defendant is indicted and charged by this indictment, with charging his Grace the Duke of Richmond with being a Murderer.

Mr. *O'Connell*—I must, my Lords, interrupt Mr. Attorney General, intending him no disrespect. He now purports to state matter contained in the Indictment, but he has not given any notice of using it on this Motion, so that we are not prepared to correct, by the attested copy, any mis-statement he may choose to make of its contents.

The CHIEF JUSTICE intimated an opinion, that the Attorney General had a right, on this Motion, to state the Indictment without notice.

The Attorney General proceeded—My Lords, in plain truth, the Gentleman had no right to interrupt me. Let him reply, but he ought not to interrupt. Indeed if he would think a little before he interrupted, he would see how absurd he is to assert that I had no right to use this Indictment, in order to shew the Court the nature and quality of the offence, so as to induce them not to postpone this Trial. My Lords, I repeat that the Defendant is indicted for calling the Duke of Richmond a Murderer. Will you postpone the punishment of so heinous an offence—of so confounded a calumny? There is no reason for doing so. The Defendant, indeed, applies *under the pretence* that he cannot procure his Witness—but what is the fact? Why, as to two of those Witnesses, Mr. Robert Peele, and Mr. William Fitzgerald, every body knows that the Sessions of Parliament will be over on the 10th or 12th inst. and in a few days afterwards those Gentlemen will come over here, and remain here for some time, and if the Defendant be really serious in his design to examine them, he can do

so. Does he want to prove by them that the Duke is a Murderer?—but if they are not here I will consent to postpone the Trial to the 20th; and if they are not arrived by that day, then, why, the Court can postpone the Trial, in the Name of God, till November. But the case is quite different with respect to Sir Charles Saxton and Mr. Wellesley Pole;—the worthy Baronet has no intention of returning here, and as to Mr. Wellesley Pole, he has not a house or habitation left in Ireland; he has no place of abo e here, so he cannot be expected to come over, and it would be idle therefore to wait for his arrival. The Trial ought then to proceed on the day I have fixed for it, and if Mr. Peele and Mr. Fitzgerald do not arrive by that day, let it stand till the 20th, and should any accident arise to prevent their attendance here on the 20th, why, then, my Lords, I will consent that the Trial should be postponed till November.

Mr. *O'Connell* said, that as leading Counsel for the Defendant, Mr. Magee, it was his duty to reply to the Attorney General.—" I am indeed at a loss to discover what it is I am to reply to. I have heard from him abundance of confident and unfounded assertion, but a total want of any thing like reasoning or argument. With his style it is beneath me to quarrel; but with the manner in which he treats my Client and the Court, I have just reason to be dissatisfied. Against every principle of law and reason, he pronounces my Client guilty before Trial—he anticipates conviction, and exults in the prospect of inflicting punishment, with as much gratification as if he were at this moment enjoying the pleasure of punishing—and he has dictated to the Court that which involves a direct contradiction of its former decision in this case. I did interrupt him, my Lords, and I was right to interrupt—first, because he made use of a document, namely, the Indictment, of which in point of form, he could make no use on this

Motion, because he had given no notice of using it—and, secondly, because he wilfully mis-stated and misrepresented that Indictment. He has told you, that my assertion is absurd—it is not a polite mode of reply—but he does say, that my assertion is absurd. I wish to be lenient to him, but I am compelled to prove that his assertions are disgraceful to him, because directly contrary to the fact. He has told you, that Mr. Magee is indicted as the Printer of a Newspaper. My Lords, the fact is otherwise; Mr. Magee is not indicted as a Printer of any Newspaper.—He has told you that Mr. Magee is indicted as the Proprietor of a Newspaper. My Lords, the fact is otherwise; Mr. Magee is not indicted as the Proprietor of any Newspaper—and the Attorney General has also told you, that Mr. Magee is indicted for charging the Duke of Richmond with being a Murderer. The fact is not so; the truth is otherwise; Mr. Magee is not indicted for charging the Duke of Richmond with being a Murderer.—Will it then be said, that it is absurd to endeavour by interruption, to prevent the Court from being imposed on by so glaring and disgraceful a misrepresentation of the facts. If it be, this is an absurdity in which I glory.—After this preface extorted from me by the arrogant manner of the Attorney General, I beg to call the attention of the Court to the Motion It is really a Motion of Course, if the documents be sufficient. Now, on the 31st of May, the Court decided upon debate, and notwithstanding the opposition of the Attorney General, that those documents were sufficien. That determination was founded in good sense, and upon admitted principle of law. The ingredients of a Motion to postpone a Trial, are these—first, that it be sworn that Witnesses are material and necessary—secondly, that they have been served with process, to compel their attendance—thirdly, that they are prevented from attending by reasons of a temporary nature—and fourthly, that there is a reasonable prospect and

expectation of their attending on a future day. All these ingredients belong to this Motion. It is sworn that the four Witnesses are material and necessary—that they have been served with Process—that they are detained in England by their Parliamentary duty, and appear to be protected in their absence by their Parliamentary privilege—and that there is every reason to expect their attendance by the first day of next Term. Upon those grounds common sense tells you that a Trial ought to be postponed—and upon those grounds the law says it must be postponed. Has it been denied—will any man presume to deny that this is the law? If he does, My Lords, I will cite a case directly in point to sustain my allegation. I will not search for it in the Blue Paper Books of stupid reports, which every packet brings us. The English Court of King's Bench contradicting their Court of Common Pleas, and each of those Courts most impartially contradicting itself—reports that involve present litigation in an inextricable maze of controversy, and will intail upon posterity the curse of still more uncertain and interminable litigation. I cite not any of these cases—I cite the case of the King v. Magee. This identical case, decided by your Lordships the last day of last Term. Upon the very documents which I use now, you decided that it was the duty of the Court and the right of the party to have the Trial postponed; then, as now, the Attorney General exerted himself to have Mr. Magee tried in the absence of his witnesses—then, as now, he gave you assertion instead of argument, and abuse instead of logic. Does he expect that this Court will contradict itself? Shall it be said, that the highest Court of Criminal Justice in the land has decided the same question in two different ways? that on the 31st of May, they decided upon the same documents, and between the same parties, that the Trial should be postponed—and, on the 7th of July, upon those very documents, and be-

tween those very parties, that it should not be postponed? Does the Attorney General expect that the Court will involve itself in this plain and manifest contradiction? that it will this day decide one thing and to-morrow, precisely the reverse? In this unfeeling, unjust, and unconstitutional anxiety to try Mr. Magee, at a time when his witnesses are absent, the Attorney General cares little for the character or dignity of the Court: his only object is the gratification of a malignant spirit of revenge, which the Court will, as it ought, feel a pleasure in counteracting, when, at the same time, it vindicates its own consistency.—But, my Lords, in fact there is a difference between the present application and the last, precisely because our case is now stronger. Then, my Lords, we could have made but one attempt to procure the attendance of those witnesses. Now we show you many exertions to procure that attendance. Our diligence was less on the former occasion; it is now greater, and is it possible to conceive any thing more absurd than to expect that the Court will, at the request, or upon the dictation of the Attorney General, now refuse that to a stronger case, which the Court, on the last occasion, conceded to a weaker and less powerful case. The administration of Justice would fall into great disrepute, and the law would be a mockery, if that which was deliberately decided on the 31st of May, should, by the same Judges, upon a stronger and a better case, be reversed on the 7th of July. I feel, my Lords, that it is impossible that such an example of inconsistency and want of principle in decision can be sanctioned for one moment by the Court, however ardently sought for by the Attorney General. Thus stands the case upon our Affidavits—you decided with us before—we only require a repetition of your decision. But it is said the case is different now—that there is now an Affidavit made on the part of the Crown, which will warrant the Court in departing from its former rule. This I must

altogether deny, and I am prepared to shew you—first, that you cannot read that Affidavit at all; secondly, that, even if it were read, it would furnish no grounds for resisting our motion. This Affidavit cannot be read, because the person, who makes it shews no connection with the Court or the Parties—he furnishes no description of himself—no reason to account why he should throw an affidavit on your files—he calls himself James Murphy of the City of Dublin, but which of the thousands of Jemmy Murphies who people Dublin, you have no means to ascertain—whether he belong to Channel-row or to Kildare street, you cannot conjecture; if he be Gentleman, Esquire, Knight, or Baronet, Attorney, Doctor, Grocer, or Merchant, all this is concealed from the Court; he states himself to be "James Murphy, of the City of Dublin," and no more. This Affidavit has been made deliberately and advisedly.—It has been filed by the active and intelligent solicitor for the Crown—it has been advised, of course, by some or all of the wise, grave, and learned phalanx of Counsel for the prosecution. Why then is the swearer concealed? Let them give us a reason for introducing a non-descript to the Court. Oh, he is safe—this James Murphy is. How can we detect, how can we punish him for perjury? Where shall we look for him? How shall we identify him? If the Court receives this Affidavit, it holds out an indemnity to perjury—a protection against discovery to fabrication and forgery. The Prosecutors have not, however, the merit of invention—they only imitate. The original example of setting detection at defiance was given them by the contrivers of a public document, presented to an Honorable Assembly, subscribed in many a forged and fictitious name, but rendering detection difficult by its uncertainty: to that document were affixed four and twenty Armstrongs, all "of the City of Dublin." Thus may every species of imposition, of perjury and of forgery, be committed, if not

without disgrace, at least without punishment. This Affidavit cannot be read, because it is the Affidavit of a non-descript. The rules of the Court require the particular description of every man who comes forward to give his written testimony on oath. Here is no description, you must therefore reject this Affidavit. Again, it is a ruled case, that no affidavit can be read unless the person shews some acknowledged connection with the Court or the Cause. Thus, in the case of Sullivan v. Margill, reported in 1st Hen. Black. 637, an affidavit was made to postpone a trial. The affidavit stated quite a sufficient case for that purpose, and the trial would have been postponed accordingly, but that it was discovered to have been made by the Clerk of the Defendant's Attorney, describing himself as such. My Lords, the affidavit was rejected and the motion refused *on that account*. It was rejected and refused because the Court would not recognize any connection between the Attorney's Clerk, and the Court, or the Cause, entitling him to make an affidavit in the Cause. See how much a stronger case the present is for rejecting this Affidavit. There the man who made the affidavit was an ascertained person, and actually employed as the Assistant of the Attorney of the Defendant. Here the affidavit maker is unknown, and does not appear to have any connection whatsoever, even with the Attorney If the Court in that case, which has ever since been recognized as Law, refused to hear a person, who certainly had some, though a remote connection with the cause and the parties, how can you hear a mere volunteer, who has no connection, remote or otherwise, either with the Court or the Parties. It follows in point of convenience, good sense, precedent, justice and law, that this Affidavit must be rejected But let me concede, that, notwithstanding all those, it may be read what advantage can it afford? what difference can it make in the case? You may

then see what it is that James Murphy, who ever he be, and I care not who he be, swears—he tells you upon his oath, that he believes that Saxton, who has sought and won the impurchasable suffrages of the ancient and loyal Corporation of Cashel, does not intend to grace Ireland again with his presence —that Mr Wellesley Pole, the Representative of the Queen's County, does not, as this worthy Jemmy Murphy believes, possess any residence in Ireland, nor does he intend, as the said Murphy believes, to return here; and he then swears, that he believes. Mr. Robert Peele intends to come back, and that Mr. William Fitzgerald intends to revisit Ireland shortly. And can this ludicrous this nonsensical Affidavit this Affidavit, that in every restatement of it excites the laughter and contempt of every person who hears it—can it be gravely urged, as affording a shadow of excuse for requiring of you to change your pronounced, and solemn opinion on the subject of this Trial? It is, my Lords, worse than no excuse; it tends to render the administration of Justice ridiculous, to urge it, or to argue upon it. But the Attorney General is so very desirous to have this Trial take place before the Witnesses for Mr. Magee can attend, that I must be indulged in a short comment on this Affidavit. One can easily, perceive that it is a bungling and slovenly attempt to produce some similarity between his case, and the case of the King v. the Chevalier D'Eon, the 3d Bur. 1514, as in that case the Court refused to postpone the Trial although the Witnesses were absent, so it is hoped that your Lordships will, on the authority of it, refuse to postpone this Trial. But examine the facts and you will see that case cannot furnish any rule to govern this. In D'Eon's case the Witnesses were natives of France, and resident there—they were in the service of the Crown, and as the French Court was interested in the prosecution, they would not even be permitted, if they were willing,

to come over. There was no probability therefore, of their future attendance—on the contrary, there was a certainty that postponement of the Trial must be useless, as those Witnesses could never attend. One regrets indeed, that Lord Mansfield suffered himself to be swayed even by so plain an argument, when the case afforded a principle upon which the Trial might and ought to have been postponed. It was this, the French King was, in fact, the prosecutor—it was at his instance the prosecution was instituted, yet he it was who detained the Witnesses. It seems, that it would have required but little of the indignant spirit of Liberty, which the Constitution requires from its Judges, to have enabled Lord Mansfield to have decided, that he who prosecuted should not be permitted to prevent a fair Trial—that if he detained the Witnesses, the Court would postpone the Trial, so as to attain justice—not, as our Attorney General desires, go on merely to procure punishment. No, Lord Mansfield was not a man calculated to disappoint Power of its prey, and he refused to postpone the Trial.—Let the Attorney-General then, make the most of his precedent—D'Eon's case does not resemble ours—the Witnesses were in France, out of the jurisdiction—ours are in England, within the jurisdiction of the authority of your Process. His Witnesses were beyond the reach of punishment for any disobedience of the Process of the English Courts—our Witnesses are liable to punishment if they disobey your Process. His Witnesses could not be compelled to attend—our Witnesses can, and, when Parliament rises, will be compelled to attend.—His Witnesses would not be permitted to leave France—no man can prevent our Witnesses from leaving England, and coming here.—The Duke of Richmond, who, one may venture to hope, has no anxiety to prevent a fair Trial, and Mr. Attorney-General, who clearly does wish to prevent a fair Trial, cannot exclude our Witnesses from Ireland, nor detain them in Eng-

land.—In D'Eon's case, the postponement he required would have been nugatory—he had no prospect of procuring his Witnesses, even if the time he asked had been granted.—In our case, the postponement gives us a certainty of procuring the attendance of our Witnesses.—D'Eon's case can, therefore, furnish no rule to regulate this case, which, so far from being like D'Eon's, is precisely the reverse of it.

Mr. Justice Day.—The cases certainly are not at all alike, as you put them, and your distinction is founded, if you can shew us how you can compel the attendance of English Witnesses here.

Mr. *O'Connell.*—There is no difficulty in that, my Lord.—Their attendance can be compelled, under the provisions of the 45th of the King c. 84.—An Act passed for the amendment of Judge Johnson's Act.—In Judge Johnson's case, the gross and glaring inconvenience and injustice which would manifestly arise from taking a man from the place where, he had really done any act, to a place where he had offended only constructively—to a place, where though he might be transported himself, he could not compel the attendance of his Witnesses—this injustice was so forcibly felt, that the Legislature interfered, and softened in some degree, the injustice of the first Statute, by the Act of the 45th of the King, which gives a power to the Irish and English Courts of Criminal Justice reciprocally to enforce the attendance of Witnesses from the one kingdom into the other. The provisions of the Statute are express, and include all Cases—and thus, my Lord, by your Lordship's confession, I have distinguished this Case from the authority of D'Eon's Case.—There is, therefore, not a shadow of reason, authority, or law, for refusing this postponement until we can procure our Witnesses. Even the Attorney General admits it, when he concedes that the Trial shall stand over until Mr. Peele and Mr. Fitzgerald shall arrive. So far he cannot con-

trovert our request. But, as to Sir Charles Saxton and Mr. Pole, he says the case is different. In what is the case different—simply and singly in this, that the Attorney General says so—in nothing else. Oh! but, perhaps, Mr. Peele is a man after Mr. Attorney's own heart, and that Mr. Pole is not. I know of no other difference, and I really disdain to argue a topic in which I have not a particle of common sense to contend against, and nothing to oppose but the *ipse dixit* of the Attorney General. Mark the sapient, the admirable distinction of this wise and grave personage. He tells the Court, that the Trial ought to be postponed till Mr. Peele and Mr. Fitzgerald arrive, but that it ought not to be postponed till Sir Charles and Mr. Pole arrive. What am I to combat? Upon what is the Court to act? Upon the high will and pleasure of the Attorney General.—Really, my Lords, I should fear to insult your understandings by detaining you in exposing the idle and extravagant nonsense which attempts to distinguish between two of the witnesses, for whom it is admitted the Trial must wait; and two others of them, for whom it is insisted that it shall not wait. It would be etter to decide upon avowed caprice, or the hazard of a die, than upon this wretched distinction, without a shadow of difference

I conclude, my Lords, by merely stating to the Court what it is we want. It is merely to postpone the Trial until the termination of the Sessions of Parliament shall have deprived our witnesses of all excuse for non-attendance. It is not suggested even upon the faith or the credulity of this James Murphy that Mr Magee has any intention of eluding a Trial, or of preventing the due course of Justice. Murphy's paltry Affidavit does not presume to suggest that which is so manifestly contrary to truth. Mr. Attorney General, indeed of his own authority, tells us that we desire to postpone the Trial, *under the pretence* of wanting Witnesses, whilst, in fact, we do not want them.

I tell him he mistakes or misrepresents. We do not seek to put off the Trial *under any pretence*—we desire to put it off *for the purpose* of procuring a fair and an impartial Trial, and a full investigation of all the facts of our defence. We desire a fair Trial—the Attorney General requires a Trial in the absence of our Witnesses. The Court will decide between us; it will decide as it has already done—and, perceiving that as great injustice and oppression must follow, from complying with the Attorney General's request, whilst no unfair advantage can be obtained by our Motion, it will again decide that the Trial shall be postponed, until the cause of the absence of our Witnesses is removed.

The *Solicitor-General* rose, and said, that it was possible all the Witnesses might be able to attend on the 20th—that he did not desire any order inconsistent with a full, fair, and impartial investigation of the merits—God forbid he should! He would therefore propose, that the Trial should now stand postponed generally till the 20th; and if then it should appear that *any* of the Witnesses was prevented from attending, the Judge at Nisi Prius would, and, he admitted, ought, to postpone the Trial till the next Term.

Mr. *O'Connell* declared his perfect satisfaction at what had fallen from the Learned Solicitor-General—and a Rule was pronounced accordingly.

COURT OF KING'S BENCH.

TUESDAY, JULY 20, 1813.

The KING, *at the Prosecution of the* DUKE *of* RICHMOND, *against* JOHN MAGEE.

This day, in the Court of King's Bench, his Majesty's Irish Attorney General, Mr. SAURIN, moved the Court, that the Trial in this Cause, in consequence of the absence of Messrs. FITZGERALD, POLE, PEELE, and SAXTON, Witnesses for the Defendant, should stand over to Monday, the 26th instant.—Motion granted.

In our Term Reports, for the year 1813—Should any Barrister *think them worth publishing*, it will appear passing strange, that a Motion in Term should be granted to postpone a Trial on the just grounds of the absence of material Witnesses, and that in a few days after, a similar Motion, between the same parties, in the Sittings after Term, before the Chief Justice of the King's Bench, be refused on the same grounds; Mr. Pole and Sir Charles Saxton, Mr. MAGEE's material Witnesses, still remaining absent.

Notwithstanding the fate of Mr. HUGH FITZPATRICK, we trust, it will not be deemed a Libel, by the "Wisest Man in the World," if the Editor of this Report should venture to publish, that the Evidence intended to be elicited from Mr. Pole and Sir Charles Saxton, on part of Mr. MAGEE's Defence, was extremely well known at the Castle.

THE TRIAL.

COURT OF KING'S BENCH.

MONDAY, JULY 26.

The Duke *of* Richmond *against* John Magee.

The Court sat at eleven o'clock.

Mr. *O'Connell.*—My Lord, I rise on behalf of Mr. Magee, to apply to your Lordship to postpone this Trial till the first *Nisi Prius* day in next Term, or such other period as may be suitable to the Prosecutor and the Court. I make this Motion upon grounds appearing in certain documents, by which it is ascertained, that, if the Trial be postponed, there is not the least doubt that the Witnesses will all attend; at least one more than those at present here will certainly attend—that will appear beyond controversy.—My Lord, my application is grounded upon three affidavits made on behalf of the Traverser, and it is sought to be opposed by one affidavit on the part of the Crown, by which I find the same anxiety to try Mr. Magee in the absence of his Witnesses, as prevailed on the former occasion, still continues.—In the affidavits of Mr. Magee, one of the 28th of May, and the other of the 5th of July, it was stated, that Mr. W. Pole, Sir C. Saxton, Mr. Peele, and Mr. Fitzgerald, were important Witnesses; the latter Gentlemen are in attendance, but the two former not—and if the Court before agreed to postpone, on account of their absence, the same cause now operates, and we come now with stronger grounds for postponement than before; we have the affidavit of service of two *subpoenas ad testificandum*; and the

affidavit of the English Agent will be produced to prove, he transmitted £20 British as *viaticum* for Mr. Pole and Sir Charles Saxton. The answer which the man received, at Sir Charles Saxton's lodgings in London, was, that he had set off for Ireland.—There is an affidavit sworn by Mr. Kemmis, the Crown Solicitor, which states, that he had received a letter from Sir Charles Saxton, and he gives us a fragment of that letter, which assigns the reason why Sir Charles Saxton does not attend, and why he disobeys the Process of this Court, because he was not tendered his *viaticum*; the *viaticum* would have been personally paid, if there had been personal attendance.—Mr. Magee further swears, that he will apply to the Court of King's Bench in England for Attachments for not obeying your Lordship's Process.

Chief Justice.—That attachment issues, on certificate from this Court that a *viaticum* was tendered.

Mr. *O'Connell*.—The only certificate, I believe, my Lord, required, is a certificate of non-attendance. The Process Server was informed, that Sir Charles had set out for Ireland; and if his servant told a falshood, why should Mr. Magee suffer? Mr. Kemmis makes affidavit of a letter from Sir Charles, and only presents us with a fragment of it; is it not strange he did not write to Mr. Magee's Agent, instead of the Agent for the prosecution? The letter is written not to the person who wanted his evidence, but to the person that did not. Mr. Fitzgerald, with a becoming politeness, did not send his excuse to the Crown Solicitor, but wrote to the Agent of the Traverser, stating the occasion of his detention, and his readiness to attend. Were we to hunt all over England for Sir Charles, to give him his *viaticum* personally? We have the letter of the English Agent, who is now in Court, whose affidavit will be sworn before this Trial shall have proceeded, and in which he states, that he believes the *viaticum* was received. Consider, my Lord, it

would be the greatest injustice to try a man in Ireland while his Witness is in England. Mr. W. Pole, it is true, has no residence in Ireland, altho' he represents an Irish County; and, I am sure, he would not stand bargaining about the miserable sum of 15l. My Lord, if there had been any negligence upon the part of the Traverser, his application would come with a bad grace; but he has done every thing in his power to induce the attendance of his Witnesses. Two fresh subpœnas have been served; and, I should hope, the case of the Chevalier D'Eon, reported in Burrow, will not be here debated: in that case, the Witnesses were in France, and no chance of their coming over; but the obstacle to the attendance of our Witnesses is now done away; they were, at the time of former applications, attending their duty in Parliament; but that cause, which I allow a legal one, is now done away; up to Thursday last, their absence is accounted for, and we can now proceed to enforce their attendance, so that there is little doubt of their being present on the day this trial will stand for, if your Lordship grant this application. Being now in possession of Sir Charles Saxton's last excuse, the non receipt of the *viaticum*, that shall be obviated, and that it has not been caused by the default of Mr. Magee, Mr. Mensie's affidavit will clearly evince. And as former postponements took place on weaker grounds, I should hope this application will be allowed.—Mr. Kemmis cannot say he believes Mr. Magee intends to escape from justice; he sets out a letter of Sir Charles Saxton, and does not swear that he believes it; by the postponement a failure of justice cannot ensue, but great injustice may be done if Traverser be obliged to go to Trial in the absence of his Witnesses.

Chief Justice.—Will the Crown Consent?

Attorney General.—By no means, my Lord; you are aware, that two of the persons alluded to in the affidavits, in the expectation of whose arrival the Trial has been heretofore postponed, have arrived.—

Mr. Fitzgerald and Mr. Peele. I did not resist letting this matter stand over till this day, but two of those Gentlemen are now in attendance, and unless we give way to a mockery of justice, it is impossible to think of postponing this Trial.

Mr. *Wallace.*—My Lord, there is nothing in the application, to justify the phrase of calling it a mockery of justice. This is not an application to postpone a punishment, but to postpone the period of proving the party guilty or not. Mr. Magee may be guilty of the Libel, but until proved so, he is to be considered innocent; the Crown cannot suffer by the delay, for judgment cannot be had till next Term.

Chief Justice.—Let me see the affidavits.

Mr. *Wallace.*—I am glad your Lordship has looked into the affidavits; they contain the usual ground for postponing the Trial, that justice cannot be done if the Trial proceed in the absence of Traverser's Witnesses; and am I not at liberty to assume, that Sir Charles Saxton is a material Witness, when it has not been contravened by the affidavit on the other side? It would be miserable special pleading to say, that because the money was not actually put into Sir Charles Saxton's pocket, although he was on his way to Ireland, that therefore he is justified in acting as if no *viaticum* at all had been sent to him. I am sorry he conceived a *viaticum* at all necessary. Two of the Witnesses, the Attorney General states, have arrived, but we made no compromise to go to Trial in the absence of the others. I shall not trouble your Lordship at greater length; but the cardinal fact in our cause is, we have the best grounded hope that he will attend on the day we have applied to fix the Trial for.

The Chief Justice.—I conceive this case comes before me as a Judge at *Nisi Prius*, under its own peculiar circumstances; and under such circumstances, even if the case of the absence of Witnesses was much stronger put than in these affida-

vits, I cannot find any thing that can induce me to postpone this Trial; it is like the common cases on Circuit. Let the prosecution go on; the Court will have an opportunity of judging from the evidence if the Prosecutor has done wisely in going on, and the party may take advantage of it. It has been argued, that on two former occasions applications were made to postpone, and acceded to. It was done by consent. As to the *viaticum*, will any man say, that the money sent over would bring men of their rank half the way? And, in fact, there must be, in those cases, a conviction on the mind of the Judge that the Witness was material; and is there any thing put forward on those affidavits to produce that conviction? I think not.

Mr. *O'Connell.*—My Lord, I know from my instructions the materiality of those Witnesses, but, as it does not appear on the face of the affidavits, I will not subject myself to contradiction by stating it. It is very unpleasant for Gentlemen to be meeting with those contradictions. I conceive it would be a mockery of justice for my Client to defend himself in the absence of his Witnesses, and, since the Court will not give us the opportunity of setting aside those proceedings, I will never be a party to a defence of him in this unequal contest. The Attorney General will proceed, if he pleases—we will not defend.

[Here the Counsel for the Traverser threw up their briefs.]

The Court having waited some time, on account of a defect of Jurors, the Pannel was called over on a fine of £50.

Attorney General.—Will your Lordship have the Jurors called on a fine of £100. This is a shameful neglect of their duty.

Chief Justice.—They are called on a fine of £50, which is as high as the Court ever goes.

The *Sheriff* said, that he had sent a coach for some of the Jurors to their place of residence.

Mr. Bailey.—If they will not wait for *our* Witnesses, why should we wait for *their* Jury?

Mr. *O'Connell.*—I am desired by Mr. Magee to state, that if the postponement shall be allowed, proper *viaticums* shall be sent.

Attorney General.—I cannot consent, as I feel confident, delay is the only object in view.

Mr. *O'Connell.*—My Lord, I am instructed by Mr. Magee to say, he is of a different opinion from his Counsel; he instructs us to appear for him, and, as we are bound to abide by those instructions, we resume his defence.

The Briefs were here handed back to the Traverser's Counsel.

The Jurors having been called over, and a number sufficient appearing.

Mr. *O'Connell.*—My Lord, I am to pray to quash the Pannel. This is a Trial by *Nisi Prius*, and yet the Pannel is different from the *Nisi Prius* one; there are but twenty-four names instead of thirty-six, and the 29th of Geo. II. chap. 6. includes the case of the King against Magee, as well as other Trials at *Nisi Prius*. The third section enacts, that any Sheriff, or other Officer, shall annex the Christian Names, &c. of the Persons returned, who shall be in number thirty-six, and that they shall try all the cases at *Nisi Prius*. The Sheriff has here returned the *venire*, and has not returned thirty-six names, twenty-four only being returned. The words, of the statute are express; the only doubt is, whether criminal cases are included; it may be said, that party and party include the King. The third section is a positive enactment. The first section has these words, "*permedietatem linguæ*," which is only applicable to criminal cases.

Chief Justice.—This appears (reading the statute) to apply to the Assizes.

Mr. *O'Connell.*—And *Nisi Prius* also.

Chief Justice.—I don't think it applies to the City of Dublin.

Mr. *O'Connell.*—Then your Lordship will make a note of our Motion to quash the Pannel. Now, my Lord we object to the array; there has been a misdirection of the *venire*. Before the statute, the proceedings were by *distringas alias*, and *pluries distringas*; the *venire* issued in this case has been returned, and remains amongst the records of the Court. There are at present two *venires*.—The Attorney-General can appoint triers to try the fact.

Attorney-General.—They allege there is error on the record. Your Lordship is not sitting here to try the Plea-roll, but the issue knit between the parties.—If there be error on the record, a Writ of Error will lie, or a motion may be made to arrest the adjustment.

Mr. *O'Connell.*—The *Nisi Prius* Roll will exhibit the ground of our objection.

Mr. *Wallace.*—We could have no opportunity to challenge the array if we did not know of the second pannel.

Chief Justice.—The record is now before me, and I do not see the second *venire*.

Mr. *Townsend.*—All objections to the array are against the Officer himself, but this is for the Court above, and not to be considered at *Nisi Prius*.

Attorney-General.—If there be any error on the record, this is not the place to amend it.

Mr. *Wallace.*—We contend for it, we are not to be tried by the second Jury.

Mr. *O'Connell* then tendered a challenge to the array for three causes. The first cause of challenge was to the favor, that the pannel had been formed at the nomination of his Majesty's Attorney General. The second was, that two *venires* had issued—that the first had been returned and pannel formed, but not proceeded upon; that the Attorney General thereby had an election of what pannel the Traverser might be tried by, and that accordingly a second *venire* issued with a new pannel, which was that before which the Traverser

was sought to be tried, and this was the second cause of challenge. The the third cause was, that under the 29th Geo. II. chap. 6, the pannel should contain 36 names, when the present only had 24.

The *Attorney General* joined issue, *ore tenus*, upon the first cause of challenge, to the favor. He moved the Court to reject the second as inadmissible, as contradicting the record of *Nisi Prius*, and being without precedent, and contrary to law; and to the last, he demurred.

The CHIEF JUSTICE said, that on the last, he was of opinion that the demurrer, taken by the Crown, ought to be allowed, as he thought the Traverser's case came not within the statute of the 29th Geo. II. chap. 6. but would save the point for the opinion of the Court above. As to the second cause of challenge, he had inspected the Record, and finding only one *venire* noticed in the Record of *Nisi Prius*, was of opinion that that cause of challenge was inadmissible, as contrary to law, and must be rejected. And to try the issue joined upon the first, Triers should be appointed.

Rowland Hyland and *Robert Hamilton*, Esqrs. two Officers of the Court, being nominated by the Chief Justice, were sworn to try the issue joined as to the first cause of challenge.

Mr. *O'Connell* said, that the first piece of evidence he should produce would be, that there had been two *venires* made out, and two returns of Juries for the trial of this cause; for this purpose Mr. Bourne, the Officer in whose hands the proper documents for such proof were to be found, should be sent for. It appearing, however, that Mr. Bourne was not at hand, Mr. O'Connell stated that he should, in the mean time, offer another part of the evidence he meant to produce.

Wm. Goff, Esq. examined by Mr. O'Connell.

Q. Do you know Mr. Joseph Goff, the Bank Director, one of the Jury in the box?—A. I do.

Q. Do you recollect having had a conversation with him, and his saying, that, having no other favour to ask of Government, he would beg to be put upon all Crown Juries?

CHIEF JUSTICE.—Can this be evidence on the issue now joined?—can you affect the Attorney General by such declarations?

Mr. *O'Connell.*—My Lord, I am instructed to say, that Mr. Goff declared that, having no other favour to ask of Government, he would request to be put upon all Crown Juries; and if I can shew that a person whose name was on the Pannel, had expressed a wish to be always employed as a Juror in cases where the Crown was a party, such expression would warrant a conclusion that his name now appeared on the Pannel in consequence of his own wishes, and in violation therefore of the impartiality necessary in the formation of Juries.—The reason why we did not produce the person himself is upon the general principle, that no man is bound to criminate himself. If Crown influence be proved, it will affect the Attorney General as identified with the Officers of the Crown.

CHIEF JUSTICE.—The charge is a serious one, and must be proved by legal evidence—I will not allow this Witness to give hear-say evidence—have you any legal evidence to produce.

Mr. *Wallace.*—My Lord, we wait for the Officer of the Court to shew a second *venire* was returned, and that would be evidence that the Attorney General did not like the Pannel first returned.

Attorney General.—If we have acted so contrary to our duty and the laws, as we are charged with having done, let them produce legal evidence to shew it.

CHIEF JUSTICE.—How can these writs be evidence upon this issue? Have you any evidence to prove the challenge?

Mr. *Wallace* argued, that the writs of *venire* were some evidence.

The *Attorney-General.*—If the Gentlemen on the other side have been instructed to make a case of misconduct on the part of Officers of the Crown, they should have come prepared to prove it. Counsel should always consider themselves as standing between the passions of their Client and the respect due to a Court of Justice; and I must protest against any further delay of the public time.

The *Solicitor-General.*—Your Lordship will now sum up the evidence for the Triers.

Chief Justice.—Gentlemen, there is no evidence to support the challenge.—*Verdict against the Challenge.*

Mr. *O'Connell.*—Is it your Lordship's pleasure to decide now on the third cause of challenge—or will you adjourn it?

Chief Justice.—I allow the demurrer.

The Jurors were then called to the book.

Leland Crosthwaite, Esq. sworn.

Thomas Andrews, Esq. being asked if he was an Alderman of Skinners' Alley, said he had not been for 20 years—sworn.

Bladen Swiney, Esq. being asked if he had formed an opinion on the subject of the prosecution, answered, he had not—sworn.

Richard Palmer, Esq. sworn.

Thomas Rochfort, Esq. swern.

Alexander Montgomery, Esq. being asked if he belonged to the Aldermen of Skinners' Alley, answered, he did not, but respected the body very much—sworn.

Martin Keene, Esq.—sworn.

Benjamin Darley, Esq sworn.

William Watson, Esq.—sworn.

William Walsh, Esq.

On the book being put to Mr. Walsh, Mr. O'Connell asked him, if he belonged to a society called the Aldermen of Skinner's Alley, which being answered in the affirmative, Mr. O'Connell stated, that they intended proving hostility against Mr. Magee, in that society, in as much as it had entered into a resolution hostile to Mr. Magee, and his Paper *The Dublin Evening Post.*

LELAND CROSTHWAITE, and THOMAS ANDREWS, Esqrs. were sworn Triers.

Henry Strachan, examined by Mr. O'Connell.

Q. Do you hold any situation in the Society of Aldermen of Skinners' Alley?—A. I do, I am Secretary.

Q. You keep the Books of Resolutions.—A. I do.

Q. Have you been served with a notice to produce them.—A. I have them here.

Q. Have you the book with the Resolution about *The Dublin Evening Post.*—A. I have not—I know of no such Resolution.

Q. Did you ever hear of any Resolution about Mr. Magee, or *The Dublin Evening Post.*—A. never.

Q. About a publication respecting Wr. Walsh.—A. No—I heard talk of such a publication about Mr. Shaw.

Q. Did you ever hear Mr. Walsh saying any thing about it?—A. Never to my knowledge.

Mr. Walsh sworn.—(*Examined by Mr. O'Connell.*)

Q. Have you ever had cause to entertain a resentment against Mr. Magee?—A. None in the world.

Q. Do you recollect any thing regarding Mr. Shaw, the Englishman, when you were on the Grand Jury?—A. I believe there was something said about me.

Q. Did you express any resentment against Mr. Mr. Magee or *The Evening Post* at that time?—A. None in the world.

CHIEF JUSTICE.—Have you any other evidence?

Mr. *O'Connell.*—I believe none, my Lord.

CHIEF JUSTICE.—Gentlemen, you will find against the Challenge.—(*Verdict against the Challenge.*)

William Walsh. Esq. sworn.
Richard Cooke, Esq. sworn.
Edward Clibborne, Esq. sworn.

THE JURY, AS SWORN.

Leland Crosthwaite	Martin Keene
Thomas Andrews	Benjamin Darley
Bladen Swinny	William Watson
Richard Palmer	William Walsh
Thomas Rochfort	Richard Cooke, and
Alexander Montgomery,	Edward Clibborne, Esqrs.

Mr. *Kemmis* opened the Indictment.

The *Attorney General.*—My Lord and Gentlemen of the Jury, it is a very painful part of the duty of the office which I hold under the Crown, to bring before you the present case. This is an indictment againt the Traverser, John Magee, for a Libel on his Grace the Duke of Richmond, the Lord Lieutenant of Ireland. It will be my duty to explain to you the meaning and motives of this Libel, in order to justify the causes and reasons of this prosecution. I must be aware of the jealousy which your minds should naturally entertain for the invaluable privilege of a Free Press; but I trust, I know the value, and venerate that privilege no less than any other man in the community.—Within its legal and proper bounds, it is the security of the subject against the Government, and of the Government against Faction in the State.—But when it transgresses those bounds, and that to a wide extent, it is peculiarly incumbent on those who administer and dispense the Law, to correct its abuses, if it is then allowed to pass unchecked by those to whom is given the care of enforcing obedience to the rules of the Constitution, the privilege itself will be brought into danger, and the happiness and security of those, for whose welfare it was intended, will be destroyed. It is the privilege of the subject in this country to use his pen and his tongue, without any previous restraint whatever. Every subject of the land has a right to carry a staff in his hand, but if he will use that staff to commit assault and battery on every man who may excite his enmity, or be the object of his spleen, it is necessary that the law should interfere, not to take

away his privilege, but to correct the abuse, and punish the offender. That, Gentlemen, being the true liberty of the Press, which it is the duty of us all to preserve inviolate, if every ruffian in the community, who throws off those restraints which a regard to truth imposes on other men, takes upon him to slander and revile, and deal out his Billingsgate upon every character, however exalted, pure, and honorable, which may excite his envy or his malice, or throw obstacles in the way of his factious and revolutionary politics, and through his wickedness the Liberty of the Press is abused, it then becomes necessary to apply the corrections of the law, lest that Liberty of the Press should be turned into an engine of public calamity, and endanger the safety of the State. The Publication, Gentlemen, is in a Newspaper entitled *The Dublin Evening Post*, of which the Traverser, Mr. Magee, is the Printer and Publisher. It will be incumbent on us to shew you that, by proving the affidavit of his registry, and that is the only fact we have to prove. I do not know whether it is intended, on the part of the Traverser, to deny the fact; he is at liberty to disprove it. The fact of publication being once established, the question for you will then be on the Libel itself, which must speak for itself. There is not an averment of any one extrinsic fact on the Record, to which evidence can be brought; and therefore, this single fact only will be left for you to determine upon, whether this Publication is what we assert it to be—a Libel, or not. I call your attention to this matter principally, because an attempt was made to postpone this Trial, on allegations, which this unfortunate young man has been imposed upon to make the subject of affidavits, namely, that he was advised and believed, that the evidence of Mr. Wm. Wellesley Pole, Mr. Peele, Mr. Fitzgerald, and Sir Charles Saxton, was material and necessary to his defence. Could I suspect for a minute, that their testimony, or the testimony of any others, were admissible

on the Trial of this Libel, I should not have resisted the postponement of the Trial to a future day. But, being satisfied he has been abused when he was advised to make the assertion, I could not consent to the delay of public justice. Two of the Gentlemen are forthcoming, and you will see, by any decision as to them, what could have been the use of the others. Gentlemen, it would be a melancholy thing, that a man should be put upon his Trial every day of his life, if some Libeller should choose to assail him, and that such Libeller should be admitted to prove the truth of it, even if he could, or that the Government of the Country should submit to a form or course of examination, for the purpose of furnishing fresh Libels for *The Dublin Evening Post*. With regard to the nature of the evidence thus offered, with a pretence of justification in the case of Libels, it may be proper for me to say a word or two. If any man in the community, either in a public or private capacity, transgresses the law, or offends against the bounds of his duty, he is liable to be prosecuted in the ordinary course of law: if he be so prosecuted, he must be proceeded against according to form and rule: he is called on to make his defence —if falsely accused, he is acquitted—if truly, he is found guilty, and is punished according to the measure of his offence: but he can never be tried again for the same offence. There would be no end if this were the case—men could never be assured of their tranquillity, or even of their existence. You see, then, what would be the consequence, if, when a person whose character has been attacked by a Libeller, in a seditious Paper, brings the offender to justice, he were himself to be put upon his defence by the Libeller, and obliged to disprove the allegations made against him; he might be put upon his trial every day of his life, and be under the necessity of having his witnesses always ready to defend his character, and prove his innocence. And therefore the Law has justly

said, that "if the publication be proved, and the Jury be satisfied that its matter is an attack upon the character of the Prosecutor, there is no other evidence necessary to substantiate the guilt of the Traverser." I must therefore say, that if the evidence to be brought by this unfortunate young man is of the kind I have alluded to, it can have been sought for no other reason but to furnish matter for new Libels against the Government. The practice would be an abuse of the professional character, and an attempt to subvert the best principles of distributive justice, and I sincerely hope the public time will not be wasted in complying with it. I shall proceed now to call your attention to the publication in question. It is entitled the "*Duke of Richmond*"—those parts of it which are stated in the indictment I shall now read to your Lordship and the Jury:

"*As the Duke of* RICHMOND *will shortly retire from the Government of Ireland, it has been deemed necessary to take such a Review of his Administration as may, at least, warn his Successor from pursuing the Errors of his Grace's conduct. The Review shall contain many Anecdotes of the Irish Court, which were never published, and which were so secret, that his Grace will not fail to be surprised at the sight of them in a Newspaper.*

"If the Administration of the Duke of RICHMOND had been conducted with more than ordinary talent, its errors might, in some degree, have been atoned for by its ability; and the People of Ireland, though they might have much to regret, yet, would have something to admire; but truly, after the gravest consideration, they must find themselves at a loss to discover any striking feature in his Grace's Administration, that makes it superior to the worst of his predecessors."

The first states, that he is not superior to the worst of his predecessors; and it then proceeds to describe those worst of Lord Lieutenants:

"They insulted, they oppressed, they murdered, and they deceived. The profligate, unprincipled WESTMORLAND—the cold-hearted and cruel CAMDEN—the artful and treacherous CORNWALLIS left Ireland more depressed and divided than they found her—they augmented the powers of the Government, both in the Military and Civil branches—they increased coercion and corruption, and uniformly employed them against the Liberties of the People."

This is a description of the men whom the Duke of Richmond has succeeded. Is it not a wicked Libel on our gracious King, by whom those Officers of his Government are appointed, that he should have selected from his Nobility such a succession of monsters?—"*They insulted, oppressed, murdered, deceived!*" This is a description of the line of his predecessors! One would think that we were reading an account of the vilest of the Roman Emperors—and the Duke of Richmond is not superior to the worst of these! He is as unprincipled and profligate as the one—cold-hearted and cruel as the other—artful and treacherous as the third! Gentlemen, at the end of a long and honorable career, such as the Duke of Richmond's, when every good and loyal man is mourning the departure of, perhaps, the best Chief Governor that Ireland ever saw, it is melancholy and afflicting to think, that there should exist a faction so desperate, and a ruffian so atrocious, who could compose, and deliberately publish so malignant, a calumny. But I do not conceive that in this part of the Libel, his chief object is to insult and outrage the feelings of the Duke of Richmond: if he had such an object in view, little does he know the character he was traducing, the armour which honor and integrity threw around him render him as invulnerable as he is insensible to such attacks as these. If the Libel related only to him, it would have gone by unprosecuted by me. But the imputation is made against the Administration of Justice by the Government of Ireland; and it forms only a part of a system of calumny with which an association of factious and revolutionary men are in the habit of vilifying every constitutional authority of the land. But, Gentlemen, this is not the first time that the imputation of Murder has been made against the Duke of Richmond, in his public and official capacity. That was the very Libel that now stands convicted in the "Statement of the Penal Code."

The charge was there explained and elucidated; you will find the charge but reiterated in the present Libel. The charge, there was, that in consequence of the Penal Laws, under which the Lord Lieutenant of Ireland must be a Protestant, where Protestants were found guilty of a violation of the law, they received a pardon, because they were Protestants; and that, on the contrary, the Catholic is suffered to be executed, because he is a Catholic—and this Libellous Publication upon the Office of the Lord Lieutenant of Ireland, is founded on this reasoning I have mentioned, and likewise is attempted to be illustrated in that infamous and convicted Publication, by stating, that "at the "Summer Assizes of Kilkenny, in 1810, one Barry "was convicted of a capital offence, for which he "was afterwards executed. That the man's case "was truly tragical—he was wholly innocent—he "was a respectable Catholic farmer, which the "Duke of Richmond knowing, suffered him to be "executed, because he was of the Catholic Re-"ligion," and therefore, Gentlemen, the imputation in this Newspaper, is but an adoption of the Libel in the "Statement of the Penal Code." If any thing was wanting to confirm this being the true object and meaning of this Libel, it is only necessary to read further:

"The consequence was, the Country was regularly abandoned to its old distraction, with whatever additional disgrace the enduring a succession of bad Administrations heaps upon the character of a Nation.—Since that period the complexion of the times has changed—the Country has advanced—it has outgrown submission—*and some forms, at least, must now be observed towards the People!* The system, however, is still the same, it is the old play with new decorations, presented in an age somewhat more enlightened—the principle of Government remain unaltered, a principle of exclusion which debars the majority of the People from the enjoyment of those privileges that are possessed by the minority, and which must, therefore, maintain itself by all those measures necessary for a Government founded on injustice."

A Government founded on injustice! But, Gentlemen of the Jury, we are now so familiarized with the false Republican principles, and Jacobinical doctrines, which the tide of the French Revolution has thrown in upon us, that we hardly think it a Libel to hear the excellent Constitution of the British Empire called a Government founded on injustice. The clue to the argument of the writer is this—the Viceroy of Ireland must be a Protestant; and, being a Protestant, it necessarily follows, says he, that the acts of his Government, towards the Catholics under it, must be founded on injustice; that he must murder and oppress them. It is impossible to read this part of the Libel without giving it that interpretation! It will be for those who are to defend the Traverser to explain this Libel in a mild and inoffensive sense. Happy is it for every Subject of our free Constitution, we are protected from the arm of Oppression, either in a Lord Lieutenant, or the King, by whom he is appointed, by the great Charter, the Bill of Rights, the Habeas Corpus Act, and the Trial by Jury. These are the protection of the Subject against arbitrary power from any quarter; and I will say this, that such are the habits of the People, resulting from our free Constitution, that even the disposition to oppression does not at this time exist.—I may safely say to you, Gentlemen of the Jury, after your long experience of the character and conduct of the Duke of Richmond, that it is not in his nature, if it was in his power, to be guilty of oppression to any man. What, then, is the meaning of this collection of abuse—this combination of audacious libel and outrage, against him and his predecessors? It has only one object; you must see to whom it is addressed; it is appealing to the religious prejudices of that part of the community, which has been already too far misled by misrepresentation, and calculated to disaffect the population of the Country in their obedience to their lawful Government—to excite in

their minds hatred against those whom the laws have appointed to rule over them, and prepare them for revolution, by exciting them to a civil and religious war. I say, no less atrocious are the motive and malignant purposes of this publication. Another part of the Libel is in these words:

"Although his Grace does not appear to know what are the qualities necessary for a Judge in Canada, or for an Aid-de-Camp in waiting at a Court—he surely cannot be ignorant what are the requisites for a Lord Lieutenant. Therefore, were an appeal to be made to him, in a dispassionate and *sober* moment, we might candidly confess that the Irish would not be disappointed in their hopes of a successor, though they would behold the same smiles, experience the same sincerity, and witness the same disposition towards conciliation. What, though they were deceived in 1795, and found the mildness of a FITZWILLIAM, a false omen of concord—though they were duped in 1800, and found that the privileges of the Catholics did not follow the extinction of the Parliament, yet, at his departure, he will no doubt state good grounds for future expectation. That his Administration was not the time for Emancipation, but that the season is fast approaching. That there were "existing circumstances," but that now the People may rely upon the virtues even of an *hereditary* Prince—that they should continue to worship the false Idol—that their cries must at last be heard; and that if he has not complied, it is only because he has not spoken. In short, his Grace will in no way vary from the uniform conduct observed by most of his predecessors; first, *preaching to the confidence of the People*; then, *playing upon their credulity*. He came over ignorant, he soon became prejudiced, and then he became intemperate. He takes from the People their money, he eats of their bread, and drinks of their wine—in return he gives them a bad Government, and, at his departure, leaves them more distracted than ever. His Grace commenced his reign by flattery; he continued it in folly, he accompanied it with violence, and he will conclude it with falshood.

"This opinion of his Grace's Administration has been formed after deliberation—it is confirmed on reflection.—Hence it is, that the errors of his conduct appear as much deserving of regret on his own account, as on that of the country that he governs. Had he remained what he first came over, or what he afterwards professed to be, he would have retained his reputation for *honest, open hostility*; defending his political principles with firmness, perhaps with warmth, but without rancor; the

supporter, and not the tool of an Administration; a mistaken politician, perhaps, but an honorable man, and a respectable soldier. His party would have been proud of him; his friends would have praised (they need not have flattered him), and his enemies, though they might have regretted, must have respected his conduct; from the worst quarter there would have been some small tribute of praise; from none any great portion of censure; and his Administration, though not popular, would have been conducted with dignity, and without offence. This line of conduct he has taken care to avoid; his original character for moderation he has forfeited; he can lay no claim to any merits for neutrality, nor does he even deserve the cheerless credit of defensive operations. He has begun to act; he has ceased to be a dispassionate Chief Governor, who views the wickedness and the folly of faction with composure and forbearance, and stands, the Representative of Majesty, aloof from the contest. He descends—he mixes with the throng—he becomes personally engaged—and, having lost his temper, calls forth his private passions to support his public principles; he is no longer an indifferent Viceroy, but a frightful Partisan of an English Ministry—whose base passions he indulges—whose unworthy resentments he gratifies—and on whose behalf he at present canvasses."

Gentlemen of the Jury, this is the language of a subject to the representative of Majesty—in such audacious and seditious language, does this ruffian traduce and vilify the public functionaries of the State, so as to threaten the public peace, and the security of the Government. How can we expect submission to the law, so necessary to the well being of the State, if those whom God and the law have constituted our Governors, are to be held up to hatred and detestation—as prone to every vice, and divested of every private and public virtue? The tremendous licentiousness of the Press calls for the interposition of the law—if it be not applied, it is impossible to say to what extent the mischief may not lead. It is for you, Gentlemen, in the capacity which you fill, to apply the wholesome correction of the law to those baneful libels. The state of the Public Press, at this day, is beyond the licentiousness of all former times and precedents. We remember the state of the Press in the year which preceded

the Rebellion, to the instrumentality of which, in a great degree, that Rebellion must be imputed; and I do most seriously aver, that the Press at this day goes beyond any thing to which the Press of that time went. I do say, that there was nothing so inflammatory, so seditious, or more atrocious to be found in *The Press* or the *Northern Star*, than at present exists in *The Irish Magazine*, the *Statement of the Penal Code*, and *The Dublin Evening Post*. If, Gentlemen, in my situation, it becomes my duty to bring those violators of the laws to justice, I submit to you if I could overlook the present publication? As to the remainder of this publication, which is not introduced upon the Record, I will make a few observations on it, and it will be for the Defendant, if possible, to elicit from it any thing in his defence. It has the same object, the inflaming the public mind—a Libel upon the administration of justice in respect to the Delegates who were prosecuted by my Learned Friends and myself. This part of the Publication relates to us, more than the Duke of Richmond. As to any thing in those transactions, I exclusively claim the responsibility, "*Me, me, adsum qui feci, in me convertite ferrum.*" I claim that part of this Libel, if it can be a Libel.—Libel coming from such a quarter is, indeed, nothing short of panegyric. We did advise the Lord Lieutenant of Ireland, that the Catholic Committee was an unlawful Assembly, and was acting in violation of the Law. His Grace the Lord Lieutenant, who is charged in this Libel with not being a dispassionate Chief Governor, who is now so bitterly accused of outraging the Constitution, used no other means for suppressing the wickedness of Faction than the correction of the law: and with respect to its folly, there is none who has ever heard him express other sentiments with regard to it, than those of pity and contempt. That Catholic Committee, now proved an unlawful Assembly, has submitted to conviction, and has been put down: if a body nominally different, has

sprung from its ashes, and is treading nearly in its footsteps, I will not hesitate to say in my proper place, and to pledge myself officially before you, that, whenever that Assembly shall be doing less good by its folly and vanity, by its extravagance and excesses, at the moment it becomes less ridiculous than mischievous and odious, I will offer my advice to apply the law, and put it down also. I do not shrink from the aspersions of *The Evening Post*; they have no terrors for me. In the discharge of my duty, going steadily forward, I will not betray the Constitution and the law of the country—I will always be, as the whole tenor of my life proves me, an enemy of faction in all its branches, but particularly of that faction which has been labouring in this country in favour of those principles which produced the horrors of the French Revolution, and would rob us of our laws and liberties. I think it is time that the Public, to whom this Libel is addressed, and whose minds have been abused and misled by misrepresentation, should be undeceived; lest, seeing Libels such as these, going unpunished, they might think such atrocious imputations would not be made if they were not, in some degree, true. They will argue, that the faction which promotes this system of abominable and unexampled libelling, is become so strong, that the Government dare not wrestle with it. It is to remove this prejudice and error from the public mind—it is to teach them, that those who publish those Libels are common, and ordinary, and contemptible malefactors, that this prosecution is instituted. They must see them committed to prison to expiate their offence, unpitied and unprotected; and then they will feel they are not altogether to submit themselves to the wickedness of this faction, by whom they are misled and abused, in order to effect their wicked purposes. Before I am done, I will suggest one happy consequence which may result from this prosecution, perhaps I am sanguine, but I hope for

it—and it is this, that that young man who has rendered himself subject to this prosecution, whom I see to be a very young man, and who has, I know, many very respectable and creditable connections, that he, although late, and before it is irrecoverable—yet, by spending one day in the company of those who understand the laws, and are in the habit of respecting them, will feel the nature of his situation; that his eyes may be opened—that he may see the dangerous and wicked faction into whose hands he has committed himself, who are endangering his liberty, and bringing infamy on his character—that he will learn, that to be the keeper of a Newspaper, to receive the slander of of every malignant ruffian or traitor who chuses to attack the Government of the Country, is a vocation as discreditable as if he were the keeper of a house of ill fame, and sought his livelihood by the basest means that degrade the lowest of our species. If this effect should be produced, I think our labour will not be lost, if this young man shall rescue himself from the hands of this faction, and not seek his gain and livelihood by a systematic violation of the law, but conduct his Paper as a source of instruction and amusement to the Public; he will become a good subject and citizen. But he will learn from the experience of this day, that if he will continue in the same course, he is bringing imprisonment on his person—ruin on his fortune, and infamy on his character. Gentlemen, if we shall prove the Publication, I have no hesitation in anticipating what will be your verdict.

Richard Malins, Esq. examined by the Solicitor General.

Q. Do you hold a situation in the Stamp Office?—A. I do, I am Clerk in the Secretary's Office.

Q. Have you an affidavit, purporting to be made by Mr. Magee?—A. I have.

Q. What name appears to the jurat?—A. John Magee.

Cross-examined by Mr. O'Connell.

Q. Do you ever read *The Hibernian Journal*, *The Correspondent*, and *The Patriot*?—A. I cannot say I ever did.

Q. What Countryman are you?—A. An Englishman.

Q. I mean to ask you, did you ever read any of those Newspapers?—A. I believe I did.

Q. Did you ever see any abuse in them?—A. I never read them particularly—I never looked for it.

Q. Do you know of those Papers having any pecuniary advantages or indulgences at the Stamp Office?—A. I neither know or heard of so much.

Hugh Howard, Esq. examined by Mr. Serjeant Moore.

Q. What situation do you hold in the Stamp Office?—A. I am a Commissioner and Chairman.

Q. Look at that paper—*(shewing the affidavit)*—Is that your name to it?—A. It is.

Q. Was it sworn before you?—A. It was, in my capacity as Chairman—I saw the person who swore it, sign it—I don't know Mr. Magee.

Cross-examined by Mr. Wallace.

Q. Do you know of those Papers, which have been mentioned, receiving any pecuniary indulgences at the Stamp Office?—A. Never.

Q. Have you any thing to do with the payments made by the Proprietors of Newspapers?—A. There is always a return of those payments given in to us—we make no distinction on the score of Party.

John De Courcy, Esq. examined by Mr. Serjeant M'Mahon.

Q. Have you seen Mr. Magee write?—A. I have; I believe that to be his name and handwriting.

[Affidavit of the 6th of March, 1811, read by Register.]

Mr. Paul Palmer examined by Mr. Jebb.

Q. What situation do you hold in the Stamp Office?—A. Register of Newspapers and Pamphlets.

Q. Is it part of your duty to receive a copy of the Newspapers, pursuant to the Act of Parliament?—A. It is.

Q. In whose custody do they remain?—A. In mine.

Q. Do you know that?—[*shewing the Witness The D. E. Post of the 5th of January*, 1813]—A. It was brought to my office.

Q. Did it remain in your custody?—A. It did, only when I brought it to the Commissioners, and I brought it back again.

Cross-examined by Mr. Hamilton.

Q. Will you swear by whom it was brought to your office?—A. Not particularly.

Q. Then it did not always remain in your custody?—A. I always sign my name on it: when I leave it with the Commissioners, I take that precaution by the direction of the Board.

Q. Can you swear it was before or after you left it?—A. Before I parted with it, I signed my name.

The Newspaper was then handed in, but the reading of it was opposed upon objections under the Stamp Acts.

Mr. *Attorney-General* then adverted to the 52d of the King, which says, if the hand-writing to the Paper left, shall not be admitted as the Proprietor's, he shall shew the contrary, or admit it.

Mr. *Perrin* then, at considerable length contended, that there was no evidence to prove Mr. Magee the present Proprietor, although the affidavit of March, 1811, states him then as Proprietor.—After the Solicitor-General, Mr. Townsend, and Mr. Wallace were heard upon this point, it was over-ruled.

Mr. *Hamilton* then suggested another point, the tendency of which was to shew that there had been no publication proved, unless the copy left at the Stamp Office was sufficient for that purpose.

The *Attorney-General* produced another copy of the same Paper as evidence of publication. The Clerk of the Crown then read the Paper, and the Case closed on the part of the Crown: after which the Court adjourned to eleven o'clock next day.

SECOND DAY.

COURT OF KING'S BENCH.

TUESDAY, JULY 27.

The Duke *of* Richmond *against* John Magee.

At eleven o'clock, the Chief Justice took his seat in Court, which was crowded from an early hour, public expectation being much excited and interested with respect to the proceedings and issue of the day.

THE DEFENCE.

Mr. O'Connell rose, and spoke as follows:—I consented to the adjournment yesterday, Gentlemen of the Jury, from that impulse of nature which compels us to postpone pain; it is, indeed, painful to me to address you; it is a cheerless, a hopeless task to address you; a task which would require all the animation and interest to be derived from the working of a mind fully fraught with the resentment and disgust created in mine yesterday, by that farrago of helpless absurdity with which Mr. Attorney General regaled you: But I am now not sorry for the delay. Whatever I may have lost in vivacity, I trust I shall compensate for in discretion. That which yesterday excited my anger,

now appears to me to be an object of pity; and that which then roused my indignation, now only moves me to *contempt*. I can now address you with feelings softened, and, I trust, subdued; and I do, from my soul, declare, that I now cherish no other sensations than those which enable me to bestow on the Attorney General, and on his discourse, pure and unmixed compassion. It was a discourse in which you could not discover either order, or method, or eloquence; it contained very little logic, and no poetry at all: violent and virulent, it was a confused and disjointed tissue of bigotry amalgamated with congenial vulgarity. He accused my Client of using Billingsgate, and he accused him of it in language suited exclusively for that meridian; he descended even to the the calling of names: he called this young Gentleman a Malefactor, and a Jacobin, and a Ruffian, Gentlemen of the Jury—he called him Abominable, and Seditious, and Revolutionary, and Infamous, and a Ruffian again, Gentlemen of the Jury—he called him a Brothel Keeper, a Pander, a kind of Bawd in breeches, and a Ruffian a third time, Gentlemen of the Jury.—I cannot repress my astonishment how Mr. Attorney General could have *preserved* this dialect in its native purity; he has been now for near thirty years in the class of polished society—he has for some years mixed amongst the highest orders in the State; he has had the honor to belong for thirty years to the first profession in the world—to the only profession, with the single exception, perhaps, of the military, to which a high-minded Gentleman could condescend to belong—to the Irish Bar. To that Bar, at which he has seen and heard a Burgh and a Duquery—at which he must have listened to a Burston, a Ponsonby, and a Curran—to a Bar which still contains a Plunket, a Ball, and, in despite of politics, I will add, a Bushe. With this galaxy of glory, flinging their light around him, how can he alone have remained in darkness?—how has it happened that the

twilight murkiness of his soul has not been illumined with a single ray, shot from their lustre?—Devoid of taste and of genius, how can he have had memory enough to preserve this original vulgarity—he is, indeed, an object of compassion; and, from my inmost soul, I bestow on him my forgiveness and my bounteous pity. But not for him alone should compassion be felt—recollect, that upon his advice—that with him, as the prime mover and instigator, all those rash, and silly, and irritating measures of the last five years, which have afflicted and distracted this long suffering country, have originated—with him they have all originated. Is there not then some compassion due to the millions whose destinies are made to depend upon his counsel?—Is there no pity to those who, like me, must know, that the liberties of the tenderest pledges of their affections, and of that which is dearer still, of their country, depend on this man's advice?—Yet, let not pity for us be unmixed—he has afforded the consolations of hope—his harangue has been heard—it will be reported—I trust faithfully reported; and, if it be but read in England, we may venture to hope, that there may remain just so much good sense in England, as to induce the conviction of the folly and the danger of conducting the Government of a brave and long enduring People by the counsels of so tasteless and talentless an adviser. See what an imitative animal man is! The sound of Ruffian, Ruffian, Ruffian, had scarcely died on the Attorney-General's lips, when you find the word honored with all the permanency of print in one of his pensioned and well-paid, but ill-read, Newspapers. Here is the first line in *The Dublin Journal* of this day:—"The Ruffian who writes for *The Freeman's Journal*."—Here is an apt scholar—he profits well of the Attorney-General's tuition. The pupil is worthy of the master. The master is just suited to the pupil.—I now dismiss the style and measure of the Attorney-General's

discource, and I require your attention to its matter. That matter I must divide, although with him there was no divsion, into two unequal portions. The first, as it was by far the greater portion of his discourse, shall be that which was altogether inapplicable to the purposes of this prosecution. The second, and infinitely the smaller portion of his speech, is that which related to the subject matter of the indictment which you are to try. He has touched upon, and disfigured a great variety of topics. I shall follow him at my good leisure through them. He has invited me to a wide field of discussion. I accept his challenge to meet him there, and I follow him to that field with alacrity and with pleasure.—This extraneous part of his discourse which I mean first to discuss, was distinguished by two leading features. The first consisted of a dull and reproving sermon, with which he treated my Colleagues and myself, for the manner in which we thought fit to conduct this defence. He talked of the melancholy exhibition of four hours wasted, as he said, in frivolous debate, and he obscurely hinted at something like incorrectness of professional conduct. He has not ventured to speak out—but I will—I shall say nothing for myself—but, for my Colleagues—my inferiors in professional standing, but infinitely my superiors in every talent and in every acquirement. My Colleagues whom I boast as my friends, not in the routine language of the Bar, but in the sincerity of esteem and affection—for my learned and upright colleagues, I treat the unfounded insinuation with the most contemptuous scorn. All I shall expose is the utter inattention to fact, which in small things as in great, seems to mark the Attorney-General's career. He talks of four hours—why, it was past one before the last of you were dragged together by the Sheriff and the Attorney-General rose to address you before three. How he could contrive to squeeze four hours into that interval, it is for him to explain—nor should I notice it, but that it

is the particular prerogative of dullness to be accurate in the detail of minor facts, so that the Attorney-General is without an excuse when he departs from them—and when for four hours you have had not quite two—Take this also with you, that we assert our uncontrolable right to employ them as we have done—and as to his advice, we neither respect, nor will we receive it—but we can afford chearfully to pardon the vain presumption that made him offer us counsel.

For the rest he may be assured that we will never imitate his example—we will never volunteer to mingle our politics, whatever they may be, with our forensic duties. I make this the rigid rule of my professional conduct—and, if I shall appear to depart from this rule now, I bid you recollect that I am compelled to follow the Attorney General into grounds, which, if he had been wise, he would have avoided. Yes, I am compelled to follow him into the discussion of his conduct towards the Catholics; he has poured out the full vial of his own praise on that conduct—praise in which, I can safely assure him, he has not a single unpaid rival. It is a topic upon which no unbribed man, except himself, dwells. I admit the disinterestedness with which he praises himself, and I do not envy him that delight, but he ought to know, if he sees or hears a word of that kind from any other man, that man receives or expects compensation for his task, and really deserves money for his labour and invention.

My Lord, upon the Catholic Subject, I commence with one assertion of the Attorney General, which, I trust, I misunderstood. He talked, as I collected him, of the Catholics having imbibed principles of a Seditious, Treasonable and Revolutionary nature! He seemed to me, most distinctly, to charge us with Sedition and with Treason! There is no relying on his words, for his meaning—I know, there is not. On a former occasion, I took down a repetition of this charge

full 17 times on my brief, and yet, afterwards, it turned out that he never intended to make any such charge; that he forgot he had ever used those words, and he disclaimed the idea they naturally convey. It is clear, therefore, that upon this subject he knows not what he says, and that these phrases are the mere flowers of his rhetoric, but quite innocent of any meaning. Upon this account I pass him by, I go beyond him, and I content myself with proclaiming those charges, whosoever may make them, to be false and base calumnies! It is impossible to refute such charges in the language of dignity or temper. But if any man dares to charge the Catholic Body, or the Catholic Board, or any of the individuals of that Board, with Sedition or Treason, I do here, I shall always in this Court, in the City, in the Field, brand him as an infamous and profligate LIAR! Pardon the phrase, but there is no other suitable to the occasion. But he is a profligate Liar who so asserts, because he must know that the whole tenor of our conduct confutes the assertion. What is it we seek?

CHIEF JUSTICE.—"What, Mr. O'Connell, can "this have to do with the question which the Jury "are to try?"

Mr. *O'Connell.—You heard the Attorney-General traduce and calumniate us—you heard him with patience and with temper; listen now to our vindication.* I ask, what is it we seek? what is it we incessantly, and, if you please, clamorously petition for? Why, to be allowed to partake of the advantages of the Constitution. We are earnestly anxious to share the benefits of the Constitution—we look to the participation in the Constitution as our greatest political blessing.—If we desired to destroy it, would we seek to share in it?—If we wished to overturn it, would we exert ourselves through calumny, and in peril, to obtain a portion of its blessings? Strange and inconsistent voice of ca-

lumny! You charge us with intemperance, in our exertions for a participation in the Constitution, and you charge us at the same time, almost in the same sentence, with a design to overturn that Constitution. The dupes of your hypocrisy may believe you—but, base calumniators, you do not, you cannot believe yourselves.

The Attorney-General, "this wisest and best of men," as his colleague, the Solicitor-General called him in his presence—the Attorney-General next boasted of his triumphs over Pope and Popery.—"I put down," said he, boastingly—"I put down "the Catholic Committee—I will put down, at my "good time, the Catholic Board." This boast is partly historical, partly prophetical. He is wrong in his history—he is quite mistaken in his prophecy. He did not put down the Catholic Committee—we gave up that name the moment that it was confessedly avowed, that this sapient Attorney-General's polemica-legal controversy dwindled into a mere dispute about words. He told us, that in the English language "pretence" means "purpose"—had it been French and not English, we might have been inclined to respect his judgment, but in point of English we ventured to differ with him; we told him, "purpose," good Mr. Attorney-General, is just the reverse of "pretence." The quarrel grew warm and animated; we appealed to Common Sense, to the Grammar, and to the Dictionary; Common Sense, Grammar, and the Dictionary decided in our favor. He brought his appeal to this Court; your Lordship and your Brethren unanimously decided that, in point of law—mark, mark, Gentlemen of the Jury, the sublime wisdom of the Law—the Court decided, that, in point of law, "pretence" does mean "purpose." Fully contented with this very reasonable and most satisfactory decision, there still remained a matter of fact in dispute between us: the Attorney-General charged us with being Representatives—we denied all Representation. He had two wit-

nesses to prove the fact for him; they swore to it one way at one Trial, and directly the other way at the next. An honorable, intelligent, and enlightened Jury disbelieved those Witnesses at the first Trial—matters were better managed at the second Trial; the Jury were better *arranged*. I speak delicately, Gentlemen; the Jury were better arranged, as the Witnesses were better informed; and, accordingly, there was one Verdict for us on the Representative Question, and one Verdict against us. You know the Jury that found for us; you know that it was Sir Charles Saxton's Castle List Jury that found against us. Well, the consequence was, that, thus encouraged, Mr. Attorney-General proceeded to force. We abhorred tumult, and were weary of litigation; we new-modelled the Agents and Managers of the Catholic Petitions; we formed an Assembly, respecting which there could not be a shadow of pretext for calling it a Representative Body; we disclaimed Representation, and we rendered it impossible even for the virulence of the most malignant Law Officer living to employ the Convention Act against us—that even upon the Attorney General's own construction, requires representation as an ingredient in the offence it prohibits. He cannot possibly call us Representatives; we are the individual servants of the Public, whose business we do gratuitously, but zealously. Our Cause has advanced, even from his persecution—and this he calls putting down the Catholic Committee. Next, he glorifies himself in his prospect of putting down the Catholic Board. For the present, he indeed tells you, that much as he hates the Papists, it is unnecessary for him to crush our Board, because we injure our own Cause so much. He says, that we are very criminal, but we are so foolish that our folly serves as a compensation for our wickedness—we are very wicked, and very mischievous, but then we are such foolish little criminals that we deserve his indulgence. Thus he tolerates offences because of their being, com-

mitted sillily; and, indeed, we give him so much pleasure and gratification, by the injury we do our own Cause, that he is spared the superfluous labour of impeding our Petitions by his prosecutions, fines, or imprisonments. He expresses the very idea of the Roman Domitian, of whom some of you, possibly, may have read; he amused his days in torturing men—his evenings he relaxed in the humble cruelty of impaling flies. A Courtier caught a fly for his imperial amusement—"Fool," said the Emperor, "fool, to give the trouble of torturing an animal, that was about to burn itself to death in the candle." Such is the spirit of the Attorney-General's commentary on our Board. Oh rare Attorney-General!—Oh best and wisest of men!!! But to be serious. Let me pledge myself to you that he imposes on you, when he threatens to crush the Catholic Board. Illegal violence may do it—force may effectuate it; but your hopes and his will be defeated, if he attempts it by any course of law. I am, if not a Lawyer, at least a Barrister. On this subject I ought to know something; and I do not hesitate to contradict the Attorney-General on this point, and to proclaim to you and to the Country that the Catholic Board is perfectly a legal Assembly—that it not only does not violate the law, but that it is entiled to the protection of the law; and, in the very proudest tone of firmness, I hurl *defiance* at the Attorney-General—I defy him to allege a Law, or a Statute, or even a Proclamation, that is violated by the Catholic Board. No, Gentlemen—no, his religious prejudices—if the absence of every charity can be called any thing religious—his religious prejudices really obscure his reason—his bigoted intolerance has totally darkened his understanding, and he mistakes the plainest facts and misquotes the clearest law, in the ardour and vehemence of his rancour. I disdain his moderation—I scorn his forbearance—I tell him he knows not the law, if he thinks as he says; and, if he thinks so, I tell him to his beard, that he is not *honest* in

not having sooner prosecuted us; and I challenge him to that prosecution. It is strange—it is melancholy to reflect, on the miserable and mistaken pride that must inflate him to talk as he does of the Catholic Board. The Catholic Board is composed of men—I include not myself—of course, I always except myself—every way his superiors—in birth, in fortune, in talents, in rank. What, is he to talk of the Catholic Board lightly? At their head is the Earl of Fingall, a Nobleman, whose exalted rank stoops beneath the superior station of his virtues—whom, even the venal minions of power must respect. We are engaged in a struggle, through the open channels of the Constitution, for our liberties. The Son of the ancient Earl, whom I have mentioned, cannot, in this his native land, attain any of the honourable distinctions of the State, and yet Mr. Attorney-General knows, that they are open to every son of every bigoted and intemperate stranger that may settle amongst us.—But this system cannot last—he may insult—he may calumniate—he may prosecute, but the Catholic Cause is on its *majestic march*—its progress is rapid and obvious—it is cheered in its advance, and aided by all that is dignified and dispassionate, by every thing that is patriotic, by all the honor, all the integrity of the Empire; and its success is just as certain as the return of to-morrow's sun and the close of to-morrow's eve. We will, we must be soon emancipated, in despite of the Attorney-General, aided, as he is, by his august Allies, the Aldermen of Skinner's-alley. In despite of the Attorney-General, and the Aldermen of Skinner's-alley, our Emancipation is certain, and not distant.

I have no difficulty in perceiving the motive of the Attorney-General, in devoting so much of his medley oration to the Catholic Question, and to the expression of his bitter hatred to us, and of his determination to ruin our hopes. It had, to be sure, no connection with the Cause, but it had a direct and natural connection with you. He has been all

his life, reckoned a man of consummate cunning and dexterity—and whilst one wonders that he has so much exposed himself upon those Prosecutions, and accounts for it by the proverbial blindness of religious zeal, it is still easy to discover much of his native cunning and dexterity.—Gentlemen, he thinks he knows his men; he knows you; many of you signed the No-Popery Petition; he heard one of you boast of it; he knows you would not have been summoned on this Jury, if you had entertained liberal sentiments; he knows all this—and therefore it is that he, with the artifice and cunning of an experienced *Nisi Prius* Advocate, endeavors to win your confidence, and to command your affections, by the display of his congenial illiberality and bigotry.—You are all, of course, Protestants; see what a compliment he pays to your religion and his own, when he endeavours thus to procure a Verdict on your oaths—when he endeavours to seduce you to what, if you were so seduced, would be perjury—by indulging your prejudices, and flattering you by the coincidence of his sentiments and wishes with your sentiments and wishes—Will he succeed, Gentlemen? Will you allow him to draw you to a perjury, out of zeal for your religion? and will you violate the pledge you have given to your God to do justice, in order to gratify your anxiety for the ascendancy of what you believe to be his Church? Gentlemen, reflect on the strange and monstrous inconsistency of this conduct; and do not commit, if you can avoid it, the pious crime of violating your solemn oaths, in aid of the pious designs of the Attorney-General against Popery.

Oh, Gentlemen, it is not in any lightness of heart that I thus address you—it is rather in bitterness and in sorrow; you did not expect flattery from me; and my Client was little disposed to offer it to you; besides, of what avail would it be to flatter, if you came here predetermined; and it is too plain that you are not selected for this Jury

from any notions of your impartiality. But when I talk to you of your oaths and of your religion, I would full fain I could impress you with a respect for both the one and the other. I, who do not flatter, tell you, that though I do not join with you in belief, I have the most unfeigned respect for the form of Christian Faith which you profess. Would that its substance, not its forms and temporal advantages, were deeply impressed on your minds—then should I not address you in the cheerless and hopeless despondency that crowds on my mind, and drives me to taunt you with the air of ridicule, I do. Gentlemen, I sincerely respect, and venerate your religion; but I despise, and I now apprehend, your prejudices, in the same proportion as the Attorney-General has cultivated them.—In plain truth, every religion is good, every religion is true to him who in his conscience believes it. There is but one bad religion, that of the man who professes a faith which he does not believe; but the good religion may be, and often is corrupted by the wretched and wicked prejudices which admits a difference of opinion as a cause of hatred.

The Attorney-General defective, in argument—weak in his cause—has artfully roused your prejudices at his side. I have, on the contrary, met your prejudices boldly. If your verdict shall be for me, you will be certain that it has been produced by nothing but unwilling conviction, resulting from sober and satisfied judgment. If your verdict be bestowed upon the artifices of the Attorney-General, you may happen to be right, but do you not see the danger of its being produced by an admixture of passion and prejudice with your reason. How difficult is it to separate prejudice from reason, when they run in the same direction. If you be men of conscience then, I call on you to listen to me, that your consciences may be safe, and your reason alone be the guardian of your oath, and the sole monitor of your decision.

I now bring you to the immediate subject of this indictment. Mr. MAGEE is charged with publishing a Libel in his Paper called *The Dublin Evening Post.* His Lordship has decided that there is legal proof of the publication, and I would be sorry you thought of acquitting Mr. MAGEE, under the pretenee of not believing that evidence. I will not trouble you on that part of the Case.—I will tell you, Gentlemen, presently, what this publication is, but suffer me first to inform you what it is not—for this I consider to be very important to the strong, and in truth triumphant defence, which my Client has to this indictment.—Gentlemen, this is not a Libel on Charles Lenox, Duke of Richmond, in his private or individual capacity. It does not interfere with the privacy of his domestic life. It is free from any reproach upon his domestic habits or conduct—it is perfectly pure from any attempt to traduce his personal honor or integrity; towards the man, there is not the least taint of malignity. Nay, the thing is still stronger, of Charles, Duke of Richmond, personally, and as disconnected with the Administration of public affairs, it speaks in terms of civility and even respect. It contains this passage, which I read from the Indictment:

"Had he remained what he first came over, or what he afterwards professed to be, he would have retained his reputation for *honest, open hostility;* defending his political principles with firmness, perhaps with warmth, but without rancor; the supporter, and not the tool of an Administration; a mistaken politician, perhaps, but an honorable man, and a respectable soldier.

The Duke is here in this Libel, my Lord—in this Libel, Gentlemen of the Jury, the Duke of Richmond is called an honorable man, and a respectable Soldier! Could more flattering expressions be invented? Has the most mercenary Press that ever yet existed, the mercenary Press of this Metropolis, contained, in return for all the

money it has received, any praise which ought to be so pleasing—" an honorable man, and a respectable soldier ?" I do, therefore, beg of you, Gentlemen, as you value your honesty, to carry with you, in your distinct recollection, this fact, that whatever of evil this publication may contain, it does not involve any reproach against the Duke of Richmond, in any other than in his public and official character.

I have, Gentlemen, next to require you to take notice, that this Publication is not indicted as a Seditious Libel. The word Seditious is indeed used as a kind of make-weight in the introductory part of the Indictment, but remark, and recollect, that this is not an Indictment for Sedition. It is not then for private slander, nor for any offence against the Constitution, that Mr. MAGEE now stands arraigned before you. In the third place, Gentlemen, there is this singular feature in this case, namely, that this Libel, as the Prosecutor calls it, is not charged in this indictment to be " false."—The indictment has this singular difference from any other I have ever seen, that the assertions of the Publication are not even stated to be false.—They have not had the curtesy to you, to state upon record that these charges, such as they are, were contrary to truth.—This I believe to be the first instance, in which the allegation of falshood has been omitted. To what is this omission to be attributed? Is it that an experiment is to be made, how much further the doctrine of the criminality of truth can be drawn.—Does the Prosecutor wish to make another bad precedent—or is it in contempt of any distinction between truth and falsehood, that this charge is thus framed—or does he fear, that you would scruple to convict, if the indictment charged that to be false, which you all know to be true? However that may be, I will have you to remember, that you are now to pronounce upon a Publication, *the truth of which is not contraverted.* Attend to the case, and you will find you are not

to try Mr. MAGEE for sedition which may endanger the State, or for private defamation which may press sorely on the heart, and blast the prospects of a private family—and that the subject matter for your decision is characterised as false, or described as untrue. Such are the circumstances which accompany this Publication, on which you are to pronounce a Verdict of guilt or innocence. The case is with you, it belongs to you exclusively to decide it—his Lordship may advise, but he cannot controul your decision, and it belongs to you alone, to say whether or not, upon the entire matter, you conceive it to be evidence of guilt, and deserving of punishment. The Statute law gives or recognizes this your right, and therefore imposes this on you as your duty. The Legislature has precluded any Lawyer from being able to dictate to you. The Solicitor-General cannot now venture to promulgate the slavish doctrine which he addressed to Doctor Sheridan's Jury, when he told them "not to *presume* to differ from the Court in matter of law." The law and the fact are here the same: namely, the guilty or innocent design of the publication. Indeed, in any criminal case, the doctrine of the Solicitor-General is intolerable; I enter my solemn protest against it. The Verdict which is required from a Jury, in any criminal case, has nothing special in it—it is not the finding of the fact in the affirmative or negative—it is not, as in Scotland, that the charge is proved, or not proved. No; the Jury is to say, whether the Prisoner be guilty, or not; and could a Juror find a true Verdict, who declared a man guilty upon evidence of some act, perhaps, praiseworthy, but clearly void of evil design or bad consequences? I do, therefore, deny the doctrine of the Learned Gentleman; it is not constitutional, and it would be frightful if it were. No Judge can dictate to a Jury—no Jury ought to allow itself to be dictated to. If the Solicitor-General's doctrine were established, see what oppressive consequences might result. At some future

period some man may attain the first place on the Bench, by the reputation which is so easily acquired; by a certain degree of Churchwardening Piety, added to great gravity and maidenly decorum of manners; such a man may reach the Bench, for I am putting a mere imaginary case—he may be a man without PASSIONS, and, THEREFORE, without VICES—he may, my Lord, be a man superfluously RICH, and, THEREFORE, not to be BRIBED with MONEY, but rendered PARTIAL by his BIGOTRY, and CORRUPTED by his PREJUDICES; such a man, INFLATED by flattery and BLOATED in his dignity, may, hereafter, use that character for sanctity, which has served to promote him, as a sword to hew down the struggling Liberties of his Country; such a Judge may interfere before Trial, and at the Trial be a partisan. Gentlemen, should an honest Jury—could an honest Jury (if an honest Jury were again found), listen, with safety, to the dictates of such a Judge? I repeat it, therefore, that the Solicitor-General is mistaken—that the Law does not, and cannot require such a submission as he preached; and, at all events, Gentlemen, it cannot be controverted, that in the present instance, that of an alleged Libel, the decision of all, law and fact, belong to you. I am then warranted in directing to you some observations on the Law of Libel, and, in doing so, I disclaim any apology for the consumption of the time necessary for my purpose. Gentlemen, my intention is to lay before you a short and rapid view of the causes, which have introduced into Courts the monstrous assertion—*that truth is a crime!*

It is to be deeply lamented, that the art of Printing was unknown at the earlier periods of our history. If, at the time the Barons wrung the simple but sublime Charter of Liberty from a timid perfidious Sovereign, from a violator of his word, from a man covered with disgrace, and sunk in infamy—if, at the times when that Charter was confirmed and renewed, the Press had existed, it would, I think,

have been the first care of those Friends of Freedom, to have established a principle of Liberty for it to rest upon, which might resist every future assault. Their simple and unsophisticated understandings could never be brought to comprehend the legal subtleties, by which it is now argued, that Falshood is useful and innocent; and Truth, the emanation and the Type of Heaven, a crime—they would have cut with their swords the cobweb links of Sophistry in which Truth is entangled; and they would have rendered it impossible to re-establish this injustice, without violating a principle of the Constitution. But, in the ignorance of the blessings of a Free Press, they could not have provided for its security—there remains, however, an expression of their sentiments on our Statute Books. The ancient Parliament did pass a law against the spreaders of *false* rumours. This law proves two things; first, that, before this Statute, it was not considered a crime in law, to spread even a false rumour, otherwise the Statute would have been unnecessary; and, secondly, that, in their notion of crime, falshood was a necessary ingredient. But here I have to remark upon and to regret the strange propensity of Judges to construe the law in favour of Tyranny, and against Liberty; for servile and corrupt Judges soon decided, that, upon the construction of this law, it was immaterial whether the rumours were true or false; and that a law, made to punish false rumours, was equally applicable to the true. This, Gentlemen, is called *construction*; it is just that which, in more recent times, and of inevitable consequence, from purer motives, has converted "pretence" into "purpose."

When the art of Printing was invented, its value to every sufferer—its terror to every oppressor, were soon obvious; and soon were means adopted to prevent its salutary effects—the Star-Chamber, the odious Star-Chamber, was either created, or at least enlarged and brought into activity. Its proceedings were arbitrary—its decisions were op-

pressive, and injustice and tyranny were formed into a system. To describe it to you in one sentence, *it was a permanently packed Jury.* Perhaps that description does not shock you much. Let me report one of its decisions, which will, I think, make its horrors more sensible to you—it is a ludicrous as well as a melancholy instance: a Tradesman—a Ruffian, I presume, he was styled—in an altercation with a Nobleman's Servant, called the Swan, which was worn on the Servant's arm for a badge, a Goose. For this offence—the calling a Nobleman's badge Swan, a Goose, he was brought before the Star Chamber, he was, of course, convicted; he lost, as I recollect, one of his ears on the pillory—was sentenced to two years imprisonment, and a fine of £500; and all this to teach him to distinguish Swans from Geese. I now ask you, to what is it you Tradesmen and Merchants are indebted for the safety and respect you can enjoy in society? What is it which has rescued you from the slavery in which persons engaged in trade were held by the Iron Barons of former days? I will tell you, it is the light, the reason, and the liberty which have been created, and will, in despite of every opposition, be perpetuated by the exertions of the Press.

Gentlemen, the Star Chamber was particularly vigilant over the infant struggles of the Press. A code of laws became necessary to govern this new enemy to prejudice and oppression—the Press. The Star Chamber adopted for this purpose, the Civil Law, as it is called—the Law of Rome—not her Law at the periods of her liberty and her glory—but the Law which was promulgated when she fell into slavery and disgrace, and recognised this principle, that the will of the Prince was the rule of the Law. The Civil Law was adopted by the Star Chamber, as its guide in proceedings against, and in frustrating Libellers—but unfortunately, only part of it was adopted, and that of course was the part least favourable to freedom.

So much of the Civil Law as assisted to discover the concealed Libeller, and to punish him when discovered, was carefully selected—but the Civil Law allowed truth to be a defence, and that part was as carefully rejected.

The Star Chamber was soon after abolished. It was suppressed by the hatred and vengeance of an outraged People, and it has since, and until our days, lived only in the recollection of abhorrence and contempt. But we have fallen upon bad days and evil times—and in our days we have seen a Lawyer, long of the prostrate and degraded Bar of England, presume to suggest an high eulogium on the Star Chamber, and regret its downfall—and he has done this in a book dedicated, by permission, to Lord Ellenborough. This is perhaps, an ominous circumstance, and as Star Chamber punishments have been revived—as two years of imprisonment have become familiar, I know not how soon the useless lumber even of well selected Juries, may be abolished, and a new Star Chamber created.

From the Star Chamber, Gentlemen, the prevention and punishment of Libels descended to the Courts of Common Law—and with the power they seem to have inherited much of the spirit of that Tribunal. Servility at the Bar, and profligacy on the Bench, have not been wanting to aid every construction unfavourable to Freedom, and at length it is taken as granted and clear law—that truth or falshood are quite immaterial circumstances, constituting no part of either guilt or innocence.

I would wish to examine this revolting doctrine, and in doing so, I am proud to tell you that it has no other foundation than in the oft repeated assertions of Lawyers and Judges. Its authority depends on what are technically called the *dictâ* of Judges and Writers, and not upon solemn or regular adjudications on the point. One servile Lawyer has repeated this doctrine from time to

time, after another—and one overbearing Judge has re-echoed the assertion of a time serving predecessor—and the Public have at length submitted.

I do therefore feel not only gratified, but bound to express my opinion upon the real law of this subject. I know that opinion is but of little weight—I have not professional rank or station, or talents, to give it importance, but it is an honest and conscientious opinion, and it is this—that in the discussion of Public Subjects, and of the Administration of Public Men, TRUTH is a duty and not a crime.

You can, at least, understand my discription of the Liberty of the Press. That of the Attorney General is as unintelligible as contradictory. He tells you, in a very odd and quaint phrase, that the Liberty of the Press consists in their being no previous restraint upon the tongue or the pen.—How any *previous* restraint could be imposed on the tongue, it is for this wisest of men to tell you; unless, indeed, he resorts to Dr. Lad's prescription with respect to the tooth-ach—eradication; neither can the absence of previous restraint constitute a Free Press, unless, indeed, it shall be distinctly ascertained, and clearly defined, what shall be subsequently called a crime. If the crime of Libel be undefined, or uncertain, or capricious, then, instead of the absence of restraint, before publication, being an advantage, it is an injury; instead of its being a blessing, it is a curse; it is nothing more than a pitfal and snare for the unwary. This Liberty of the Press is only an opportunity and a temptation offered by the law to the commission of crime; it is a trap laid to catch men for punishment: it is not the liberty of discussing truth, or discountenancing oppression, but a mode of rearing up victims for prosecution, and of seducing men into imprisonment. Yet, can any Gentleman concerned for the Crown, give me a definition of the crime of Libel? Is it not uncer-

tain and undefined—and, in truth, is it not, at this moment, quite subject to the caprice and whim of the Judge and of the Jury? Is the Attorney General—is the Solicitor General disposed to say otherwise? If he do, he must contradict his own doctrine, and adopt mine. But no, Gentlemen, they must leave you in uncertainty and doubt, and ask you to give a Verdict, on your oath, without furnishing you with any rational materials to judge whether you be right or wrong. Indeed, to such a wild extent of caprice has Lord Ellenborough carried the doctrine of crime in Libel, that he appears to have gravely ruled, that it was a crime to call one Lord, "a stout built Special Pleader," although, in point of fact, that Lord was stout built, and had been very many years a Special Pleader.—And that it was a crime to call another Lord "a Sheep Feeder from Cambridgeshire," although that Lord was right glad to have a few sheep in that County. This is the extravagant vagaries of the Crown Lawyers and prerogative Judges; you will find it impossible to discover any rational rule for your conduct, and can never rest upon any satisfactory view of the subject, unless you are pleased to adopt my description. Reason and Justice equally recognize it, and believe me, that genuine Law is much more closely connected with Justice and Reason, than some persons will avow.

Gentlemen, you are now apprized of the nature of the alleged Libel—it is a discussion upon the Administration of Public Men. I have also submitted to you my view of the Law applicable to such a Publication, we are therefore prepared to go into the consideration of every sentence in the Newspaper in question. But before I do so, just allow me to point your attention to the motives of this young Gentleman. The Attorney-General has threatened him with fine and a dungeon; he has told Mr. MAGEE that he should suffer in his purse and in his person. Mr. MAGEE

knew his danger well. Mr. MAGEE, before he published this Paper, was quite apprized that he ran the risk of fine and of imprisonment—he knew also, that if he changed his tone, that if he became merely neutral, but, especially, if he went over to the other side, and praised the Duke of Richmond; if he had sufficient gravity to talk without a smile, of the sorrow of the People of Ireland at his Grace's departure; if he had a visage sufficiently lugubrious, to say so without laughing, to cry out "mournfully, oh! mournfully!" for the departure of the Duke of Richmond. If, at a period, when the People of Ireland, from Magherafelt to Dingleicouch, are rejoicing at that departure, Mr. MAGEE could put on a solemn countenance, and pick up a grave and narcotic accent, and have the resolution to assert the sorrow of the People for losing so sweet and civil a Lord Lieutenant—why, in that case, Gentlemen, you know the consequences—they are obvious, he might libel certain classes of his Majesty's subjects with impunity—he would get abundance of money, a place and a pension—you know he would. The Proclamations would be inserted in his Paper, the Wide Streets Advertisements, the Ordinance and Barrack Board Notices, and the Advertisements of all the other public Boards and Offices.—You can scarcely calculate how much money he sacrifices to his principles; I am greatly within bounds when I say, that at least £5000 per annum of the public money would reach him, if he was to alter his tone and abandon his opinions. Has he instructed me to boast of the sacrifices he thus makes? No, Gentlemen, no, no; he deems it no sacrifice, because he desires no share in the public plunder, but I introduce this topic to demonstrate to you the purity of his intentions. He cannot be actuated, in the part he takes, by mean or mercenary motives—it is not the base lucre of gain that leads him astray. If he be mistaken, he is, at least, disinterested and sincere. You may dislike his political opinions, but you cannot avoid respecting the independence of his principles.

Behold, now, the Publication, which this man of pure principles is called to answer for as a Libel. It commences thus:

DUKE OF RICHMOND.

"As the Duke of RICHMOND will shortly retire from the Government of Ireland, it has been deemed necessary to take such a Review of his Administration, as may, at least, warn his Successor from pursuing the errors of his Grace's conduct.—The Review shall contain many Anecdotes of the Irish Court, which were never published, and which were so secret, that his Grace will not fail to be surprised at the sight of them in a Newspaper."

In this paragraph there is nothing libellous; it talks of the errors, indeed, of his Grace's Administration—but I do not think the Attorney-General will venture to suggest, that the gentle expression of "Errors" is a Libel. To err, Gentlemen, is human; and as his Grace is admitted, by the Attorney-General, to be but a man, I shall waste none of your time in proving, that we may, without offence, treat of his "Errors." But this is not even the Errors of the Man, but of his Administration; it was not infallible, I humbly presume.

I call your particular attention to the second paragraph; it runs thus:

"If the Administration of the Duke of RICHMOND had been conducted with more than ordinary talent, its errors might, in some degree, have been atoned for by its ability, and the People of Ireland, though they might have much to regret, yet, would have something to admire; but truly, after the gravest consideration, they must find themselves at a loss to discover any striking feature in his Grace's Administration, that makes it superior to the worst of his predecessors."

The Attorney-General dwelt much upon this paragraph, Gentlemen, and the importance which he attached to it, furnishes a strong illustration of his own consciousness of the weakness of his case. What is the meaning of this paragraph? I appeal to you whether it be more than this—that there has been nothing admirable in this Administration—that there has not been much ability displayed by it. So far, Gentlemen, there is, indeed, no flattery,

but still less of Libel, unless you are prepared to say, that to withhold praise from any Administration deserves punishment. Is it a crime not to admire an Administration? is it an indictable offence not to perceive its occult talents? Why if it be, find my Client guilty of not being a sycophant and a flatterer, and send him to prison for two years, to gratify the Attorney-General, who tells you that the Duke of Richmond is the *best* Chief Governor Ireland ever saw. But the mischief, I am told, lies in the art of the sentence. Why all that it says is, that it is difficult to discover the striking features that distinguish this from bad Administrations. It does not, Gentlemen, assert, that no such striking features exist; much less does it assert that no features of that kind exist, or that such features, altho' not striking, are not easily discernible; so that, really, you are here again required to convict a man for not flattering. He thinks an Administration untalented and silly—that is no crime; he says it has not been marked with talent or ability, that it has no striking features—all this may be mistaken and false, yet there is nothing in it that resembles a crime. And, Gentlemen, *if it be true*—if this be a foolish Administration, can it be an offence to say so? If it has had no striking features to distinguish it from bad Administrations, can it be criminal to say so? Are you prepared to say, that not one word of truth can be told, under no less a penalty than years of a dungeon and heavy fines? Recollect that the Attorney-General told you, that the Press was the protection of the People against the Government! Good God! Gentlemen, how can it protect the People against the Government, if it be a crime to say of that Government that it has committed errors, displays little talent, and has no striking features? Did the Prosecutor mock you when he talked of the protection the Press afforded to the People? If he did not insult you, by the admission of that upon which he will not allow you to act, let me ask, against what is the Press to protect the People? When do the People want protection?

When the Government is engaged in delinquencies, oppression and crimes. It is against these that the People want the protection of the Press. Now, I put it to your plain sense, whether the Press can afford such protection, if it be punished for treating of these crimes. Still more, can a shadow of protection be given by a Press that is not permitted to mention the errors, the talents, and the striking features of an Administration? Here is a watchman admitted by the Attorney-General to be at his post to warn the People of their danger, and the first thing that is done to this watchman is to knock him down and bring him to a dungeon, for announcing the danger he is bound to disclose. I agree with the Attorney-General, the Press is a Protection; but it is not in its silence, or in its voice of flattery. It can protect only by speaking out when there is danger, or error, or want of ability. If the harshness of this tone be complained of, I ask, what is it the Attorney-General would have?—Does he wish that this Protection should speak so as not to be understood; or, I again repeat it, does he mean to delude us with the name and the mockery of protection?—Upon this ground, I defy you to find a verdict for the Prosecutor, without declaring that he has been guilty of an attempt to deceive, when he talked of the Protection of the Press against errors, ignorance, and incapacity, which it is not to dare even to name. Gentlemen, upon this second paragraph, I am entiled to your verdict, upon the Attorney-General's own admission. He, indeed, passed on to the next sentence with an air of triumph, with the apparent certainty of its producing a conviction—I meet him upon it—I read it boldly—I will discuss it with you manfully—it is this:

"They insulted—they oppressed—they murdered, and "they deceived."

The Attorney General told us, rather ludicrously, that they, meaning the Duke's predecessors, included, of course, himself. How a man could be included amongst his predecessors, it would be dif-

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ficult to discover. It seems to be that mode of expression which would indicate, that the Attorney-General, notwithstanding his foreign descent, has imbibed some of the language of the native Irish. But our blunders arise not like this, from a confusion of idea; they generally are caused by too great condensation of thought; they are, indeed, frequently of the head, but never, never of the heart. Would I could say so much for the Attorney-General; his blunder is not to be attributed to his cool and cautious head; it sprung, I much fear, from the misguiding bitterness of the bigotry of his heart.

Well, Gentlemen, this sentence does, in broad and distinct terms, charge the Predecessors of the Duke, but not the Duke himself, with Insult, Oppression, Murder, and Deceit. But it is History, Gentlemen; are you prepared to silence the voice of History? Are you disposed to suppress the recital of facts—the story of the events of former days? Is the Historian and the Publisher of History to be exposed to indictment and punishment? Let me read for you two passages from Doctor Leland's History of Ireland; I choose a remote period, to avoid shocking your prejudices by the recital of the more modern crimes of the Faction to which most of you belong. Attend to this passage, Gentlemen—Anno 1574:

"A solemn Peace and Concord was made between the Earl of Essex and Felim O'Nial. However, at a Feast, wherein the Earl entertained that Chieftain, and at the end of their good cheer, O'Nial with his Wife were seized; their friends who attended were put to the sword before their faces. Felim, together with his Wife and Brother, were conveyed to Dublin, where they were *cut up in quarters*."

How would you have this fact described? In what lady-like terms is the future historian to mention this savage and brutal massacre. Yet Essex was an English Nobleman—a predecessor of his Grace; he was accomplished, gallant, and gay—the envied paramour of the virgin Queen; and if he

afterwards fell on the scaffold, one of the race of the ancient Irish may be permitted to indulge the fond superstition that would avenge the Royal Blood of the O'Neil and of his Consort, on their perfidious English Murderer. But my soul fills with bitterness, and I will read of no more Irish murders. I turn, however, to another page, and I will introduce to your notice another predecessor of his Grace the Duke of Richmond. It is Grey, who, after the recal of Essex, commanded the English forces in Munster. The Fort of Smerwick, in Kerry, surrendered to Grey at discretion. It contained some Irish troops, and more than 700 Spaniards. The historian shall tell you the rest:

"That mercy for which they sued was rigidly denied to them. Wingfield was commissioned to disarm them, and when this service was performed, an English company was sent into the Fort.

"The Irish Rebels found they were reserved for execution by Marshal Law.

"The Italian General and some officers were made prisoners of war; but the garrison *was butchered in cold blood*—nor is it without pain, that we find a service so horrid and detestable committed to Sir Walter Raleigh."

The garrison was butchered in cold blood, says the historian. Furnish us, Mr. Attorney General, with gentle accents and sweet words, to speak of this savage atrocity—or will you indite the author? Alas! he is dead, full of years and respect; as faithful an historian as the prejudices of his day would allow, and a beneficed Clergyman of your Church. Gentlemen of the Jury, what is the mild language of this Paper compared with the indignant language of history. Releigh—the ill-stared Raleigh, fell a victim to a tyrant master—a corrupt, or overawed Jury—and a virulent Attorney General; he was baited at the Bar with language more scurrilous and more foul than that you heard yesterday poured upon my Client. Yet, what atonement to civilization could his death afford for the horrors I have mentioned? Decide now, Gentlemen, between those Libels—between that Defamer's history and

my Client. He calls those predecessors of his Grace, Murderers. History has left the living records of their crimes, from the O'Nial, treacherously slaughered, to the cruel cold butchery of the defenceles prisoners. Until I shall see the Publishers of Leland and of Hume brought to your bar, I defy you to convict my Client.

To shew you that my Client has treated those predecessors of his Grace with great lenity, I will introduce to your notice one, and only one more of them, and he too fell on the scaffold—the unfortunate Strafford, the best servant a despotic King could desire. Amongst the means taken to raise money in Ireland for James the First, and his son Charles, a proceeding called "a Commission to Inquire into Defective Titles," was invented. It was a scheme, Gentlemen, to inquire of every man what right he had to his own property, and to have it solemnly and legally determined that he had none. To effectuate this scheme required great management, discretion and integrity. First, there were 4000 excellent horse raised, for the purpose of being, as Strafford himself said, "good lookers on;" the rest of the arrangement I would recommend to modern practice, it would save much trouble; I will shortly abstract it from two of Strafford's own Letters. The one appears to have been written by him to the Lord Treasurer; it is dated the 3d December, 1634; He begins with an apology for not having been more expeditious in this work of plunder, for his employers were, it seems, impatient at the melancholy waste of time; he then says, "Howbeit, I will redeem the time as "much as I can, that with such as may give fur"therance to the King's Title, *and inquire out, fit* "*men to serve upon the Juries.*"

Take notice of that, Gentlemen, I pray you, perhaps you thought that the "packing of Juries" was a modern invention—a new discovery. You see how greatly mistaken you were; the thing has example and precedent to support it, and the authority of both are in our Law quite conclusive.

The next step was to corrupt: Oh no, to interest the wise and learned Judges. But commentary becomes unnecessary, when I read for you this passage from a Letter of his to the King, dated the 9th of December, 1636:

"Your Majesty was graciously pleased, upon my humble advice, to bestow four shillings in the pound upon your Lord Chief Justice and Lord Chief Baron in this Kingdom, forth of the first Yearly Rent raised upon the Commission of defective Titles, which, *upon observation, I find to be the best given that ever was.*—For now they do intend it, with a care and diligence, such as if it were their own private, and most certain the gaining to themselves; every four shillings once paid, shall better your Revenue for ever after, at least five pounds."

Thus, Gentlemen of the Jury, all was ready for the mockery of Law and Justice, called a Trial.—Now, let me take any one of you; let me place him here, where Mr. MAGEE stands, let him have his property at stake, let it be of less value, I pray you, than a compensation for two years imprisonment. It will, however, be of sufficient value to interest and rouse all your agony and anxiety. If you were so placed here, you would see before you the well-paid Attorney-General, perhaps, malignantly delighted to pour his rancour upon you; on that Bench would sit, the corrupt and partizan Judge, and before you, on that seat which you now occupy, would be placed the packed and predetermined Jury. I beg, Sir, to know what would be your feelings, your honor, your rage; would you not compare the Attorney-General to the gambler, who played with a loaded die, and then you would hear him talk, in solemn and monotinous tones, of his conscience!!! Oh, his conscience, Gentlemen of the Jury!!!—But the times are altered; the Press, the Press, Gentlemen, has effectuated a salutary revolution, a commission of defective titles would no longer be tolerated; the Judges can no longer be bribed with money, and Juries can no longer be ———, I must not say it.—Yes, they can, you know; we all know they can be still *inquired out*,

and "packed," as the technical phrase is. But you, who are not packed, you, who have been *fairly* selected, will see that the language of the Publication before us, is mildness itself, compared with that which the truth of history requires, compared with that which history has already used.

I proceed with this alleged Libel.—The next sentence is this—"The profligate unprincipled "Westmorland."—I throw down the Paper, and address myself in particular to some of you. There are, I see, amongst you, some of our "Bible Distributors," and of our "Suppressors of Vice."—Distributors of Bibles, Suppressors of Vice, what call you Profligacy? what is it you would call Profligacy? Suppose the Peerage was exposed to sale—set up at open auction: it was at that time a judicial office: suppose that its price, the exact price of this judicial office, was accurately ascertained by daily experience—would you call that Profligacy? If Pensions were multiplied beyond bounds and beyond example—if places were augmented until invention was exhausted, and then were subdivided and split into halves, that two might take the emoluments of each, and no person do the duty—if these acts were resorted to, to corrupt your Representatives—would you, gentle Suppressors of Vice, call that Profligacy? If the father of children selected in the open day, his adultress paramour—if the wedded mother of children displayed her crime unblushingly—if the assent of the titled or untitled wittol, to his own shame, was purchased with the People's money—if this scene, if these scenes were enacted in the open day, would you call that Profligacy, sweet Distributors of Bibles? The Women of Ireland have always been beauteous to a proverb—they were, without an exception, chaste beyond the terseness of a proverb to express—they are still as chaste as in former days, but the depraved example of a depraved Court has furnished some exceptions,

and the action or criminal conversation, before the time of Westmorland unknown, has since become more familiar to our Courts of Justice. Call you the sad example which produced those exceptions —call you *that* profligacy, Suppressors of Vice and Bible Distributors? The vices of the poor are within the reach of control; to suppress them, you can call in aid the Church Warden and the Constable; the Justice of the Peace will readily aid you, for he is a gentleman—the Court of Sessions will punish those vices for you by fine, by imprisonment, and, if you are urgent, by whipping. But, Suppressors of Vice, who shall aid you to suppress the vices of the Great? Are you sincere, or are you, to use your own phraseology, white-washed tombs—painted charnel-houses? Be ye hypocrites? If you are not—if you be sincere—(and, oh, how I wish that you were)—if you be sincere, I will steadily require to know of you, what aid you expect, to suppress the vices of the rich and great? Who will assist you to suppress those vices? The Church-Warden!—why he, I believe, handed *them* into the best pew in one of your Cathedrals, that they might lovingly hear Divine Service together. The Constable!!—absurd. The Justice of the Peace!—No, upon his honor. As to the Court of Sessions, you cannot expect it to interfere—and, my Lords, the Judges, are really so busy at the Assizes, in hurrying the Grand Juries through the Presentments, that there is no leisure to look after the averrable faults of the Great. Who, then, sincere and candid Suppressors of Vice, can aid you?—*The Press*; the Press alone talks of the profligacy of the Great, and, at least, shames into decency those whom it may fail to correct. The Press is your, but your only, assistant.—Go, then, men of conscience, men of religion—go, then, and convict JOHN MAGEE, because he published that Westmorland was profligate and unprincipled, as a Lord Lieutenant—do, convict, and then return to

your Distributions of Bibles, and to your attacks upon the Recreations of the Poor, under the Name of Vices—do, convict the only aid which Virtue has, and distribute your Bibles, that you may have the name of being religious.—Upon your sincerity depends my Client's prospect of a Verdict. Does he lean upon a broken reed?

I pass on from the sanctified portion of the Jury, which I have latterly addressed—and I call the attention of you all to the next member of the sentence:

"The cold-hearted and cruel CAMDEN."

Here I have your prejudices all armed against me. In the administration of Camden your faction was cherished, and triumphant. Will you prevent him to be called cold and cruel? Alas! to-day—why have I not men to address who would listen to me for the sake of impartial justice. But, even with you, the case is too powerful to allow me to despair. Well, I do say, the cold and cruel Camden. Why, on *one Circuit*, during his Administration, there were *one hundred individuals tried before* ONE *Judge, of these,* NINETY-EIGHT *were capitally convicted, and* NINETY-SEVEN *of them hanged!* I understand *one* escaped, but he was a SOLDIER who murdered a *Peasant*, or something of that *trivial* nature—*ninety-seven* victims in one circuit. In the mean time it was necessary for the purposes of the Union, that the flame of rebellion should be fed. The Meetings of Rebel Colonels in the North were for a length of time, regularly reported to Government, but the rebellion was not then ripe enough, and whilst the fruit was coming to maturity under the fostering hand of the Administration, the wretched dupes attoned on the gallows for allowing themselves to be deceived. In the mean time, the soldiery were turned in at free quarters amongst the Wives and Daughters of the Peasantry!!!

Have you heard of Abercrombie—the valiant and the good. He who, mortally wounded, ne-

glected his wound until Victory was ascertained —he who allowed his life's stream to flow unnoticed, because his Country's Battle was in suspense—he who died the martyr of victory—he who commenced the career of glory on the land, and taught French insolence, than which there is noting so permanent—even transplanted, it exhibits itself to the third and fourth generation—he taught French insolence, that the British and Irish Soldier was as much his superior by land, as the Sailor was confessedly by sea—he, in short, who commenced that career which has since placed the Irish Wellington on the highest pinnacle of Glory—Abercrombie and Moore were in Ireland, under Camden—Moore, too, has since fallen at the moment of triumph—Moore, the best of sons, of brothers, of friends, of men—the Soldier and the Scholar—the soul of reason, and the heart of pity—Moore has in documents, of which you may plead ignorance, left his opinions upon record with respect to the cruelty of Camden's Administration. But, you all have heard of Abercrombie's Proclamation, for it amounted to that—he proclaimed that Cruelty in terms the most unequivocal—he stated to the Soldiery and to the Nation, that the conduct of the Camden Administration had rendered "the Soldiery formidable to all but the Enemy."—Was there no Cruelty in thus degrading the British Soldier? And say, was not the process by which that degradation was effectuated Cruelty? Do then contradict Abercrombie, upon your oaths, if you dare; but, by doing so, it is not my Client alone you will convict—you will also convict yourselves of the foul crime of perjury.

I now come to the third branch of this sentence; and here I have an easy task. All, Gentlemen, that is said of the artificer and superintendent of the Union is this—"the artful and treacherous Cornwallis." Is it necessary to prove that the Union was effectuated by artifice and treachery? For my

part, it makes my blood boil when I think of the unhappy period which was contrived and seized on to carry it into effect; one year sooner, and it would have made a revolution—one year later, and it would have been for ever impossible to carry it. The moment was artfully and treacherously seized on, and our Country, that was a Nation for countless ages, has dwindled into a Province, and her name and her glory are extinct for ever. I should not waste a moment upon this part of the case, but that the Gentlemen at the other side who opposed that measure, have furnished me with some topics which I may not, cannot omit. Indeed, Mr. MAGEE deserves no Verdict from any Irish Jury, who can hesitate to think that the contriver of the Union is treated with too much lenity in this sentence—he fears your disapprobation for speaking with so little animosity of the Artificer of the Union. There was one piece of treachery committed at that period, at which both you and I equally rejoice—it was the breach of faith towards the leading Catholics; the written promises made them at that period have been since printed—I rejoice with you that they were not fulfilled; when the Catholic trafficed for his own advantage upon his Country's miseries, he deserved to be deceived. For this mockery I thank the Cornwallis Administration; I rejoice, also, that my first introduction to the stage of public life was in the opposition to that measure.

In humble and obscure distance I followed the footsteps of my present adversaries. What their sentiments were then of the Authors of the Union, I beg to read to you. I will read them from a Newspaper set up for the mere purpose of opposing the Union, and conducted under the controul of those Gentlemen. If their Editor should be gravely denied, I shall only reply—"Oh, cease your funning."*

* A Pamphlet under this title was published by the Solicitor General, against the Union. It was full of wit and and talent.

The charge of being a Jacobin was at that time made against the present Attorney-General—him, plain Wm. Saurin—in the very terms, and with just as much truth as he now applies it to my Client. His reply shall serve for that of Mr. MAGEE. I take it from the Anti-Union of the 22d March, 1800.

"To the charge of Jacobinism, Mr. Saurin said, he knew not what it meant, as applied to him, *except it was an opposition to the will of the British Minister.*"

So says Mr. MAGEE—but, Gentlemen, my eye lights upon another passage of Mr. Saurin's, in the same speech from which I have quoted the above. It was in these words:

"Mr. Saurin admitted, that debates might sometimes produce *agitations*, but that was the *PRICE necessarily paid for LIBERTY.*"

Oh, how I thank this good Jew for the word. Yes, agitation is, as Mr. Saurin well remarked, the Price necessarily paid for Liberty. We have paid the price, Gentlemen, and the honest man refuses to give us the goods.—[*much laughing.*]

Now, Gentlemen, of this Mr. Saurin, then an agitator, I beg leave to read the opinion upon this Union, the author of which, we have only called artful and treacherous. From his speech of the 13th of March, 1800, I select those passages:

"Mr. Saurin said, he felt it his duty to the Crown, to the Country, and to his Family, to warn the Minister of the dreadful consequences of persevering in a measure, which the People of Ireland *almost unanimously disliked.*"

And again:

"He, for one, would assert the principles of the Glorious Revolution, and boldly declare, in the face of the Nation, that when the Sovereign Power dissolved the compact that existed between the Government and the People, that moment the Right of Resistance accrues. Whether it would be prudent in the People to avail themselves of that right, would be another question.—But if a Legislative Union were forced on the Country, against the will of its Inhabitants, it would be a NULLITY, and resistance to it would be a STRUGGLE against USURPATION, and not a RESISTANCE against LAW."

May I be permitted just to observe, how much more violent this Agitator of the year 1800 was, than we, poor and timid Agitators of the year 1813. When did we talk of Resistance being a question of Prudence? Shame upon the men who call us intemperate, and yet remember their own violence.

But, Gentlemen, is the Attorney-General at liberty to change the nature of things, with his own official and professional prospects? I am ready to admit, that he receives thousands of pounds, by the year, of the public monies, in his office of Attorney-General—thousands from the Crown-Solicitor—thousands, for doing little work, from the Custom-house—but does all this public booty, with which he is loaded, alter the nature of things, or prevent that from being a deceitful measure, brought about by artful and treacherous means, against which Mr. Saurin, in 1800, preached the holy doctrine of Insurrection, sounded the tocsin of Resistance, and summoned the People of the land to battle against it, as against an *Usurpation*. In 1800 he absolves the Subjects from their allegiance, if the Usurpation, styled the Union, shall be carried—and he, this identical Agitator, in 1813, indicts a man, and calls him a Ruffian, for speaking of the Contrivers of the Union, not as Usurpers, but as artful and treacherous men. Gentlemen, pity the situation in which he has placed himself; and pray do not think of inflicting punishment upon my Client, for his extreme moderation.

It has been coarsely urged, and it will, I know, be urged in the splendid misrepresentations with which the Solicitor-General can so well distort the argument he is unable to meet—it will, I know, be urged by him, that, having established the right to use this last paragraph, having proved that the predecessors of the Duke were Oppressors, and Murderers, and Profligate, and Treacherous, and, and—the Libel is only aggravated thereby, as the first paragraph compares and combines the Duke of Richmond with the worst of his predecessors. This

is a most fallacious assertion; and here it is that I could wish I had to address a dispassionate and an enlightened Jury. You are not, you know you are not, of the selection of my Client: had he the poor privilege of the sheep-stealer, there are, at least, ten of you who should never have been on his Jury. But the Jury he would select is not such a Jury in his favour as has been impannelled against him; he desires no favour; he would desire only that the most respectable and unprejudiced of your city should be selected for his trial—his only ambition would be perfect impartiality—he would desire, and I should desire for him, a Jury whose verdict of conviction, if they did convict him, would produce a sense of error and a feeling of being wrong, more painful to his mind than a Star-Chamber sentence. If I had to address such a Jury, how easily could I shew them that there is no comparison—no attempt at similitude. On the contrary, the object of the writer is clearly to make a contrast. Grey murdered; but he was an able Statesman; his massacre was a crime in itself, but eminently useful to his employers—it contributed mainly to secure the forfeiture of the overgrown territories of the House of Desmond. Essex was a murderer, but his extreme of vice was accompanied by great military services—he was principally instrumental in effectuating the conquest of Ireland—even his crimes served the cause of his Royal Mistress, and the territory of the slaughtered O'Nial became shire land—he had terrific cruelty to answer for, but he could give it some answer in the splendour and solidity of his services. So of Strafford—he was an eminent oppressor, but he was also eminently useful to his Royal Master. As to the Duke of Richmond, the contrast is intended to be complete—he has neither great crimes or great virtues. He did not Murder, like Essex and Grey, but he did not render any splendid services. In short, his Administration has been

directly the reverse of these. It has been marked by errors, and not crimes. It has not displayed talents, as they did, and it has no striking features as they had. Such is the fair, the rational, and the just construction, which a fair, rational, and just Jury would put upon it.

Indeed the Attorney-General seems to feel that it was necessary for him to resort to other topics, in order to induce you to convict upon this part of the case. He tells you that this is the second time that the Duke of Richmond has been called a Murderer. Gentlemen, in this indictment there is no allegation that the Duke is styled a Murderer by this Publication; if there had, he should be readily acquitted, even for the variance; and when the Attorney-General resorts to Barry's case, he does it to inflame your passions and mislead your understandings—and then what has the Irish Magazine to do with this Trial?

"Walter Cox, with his Irish Magazine, is as good a Protestant as the King's Attorney-General, and, probably, quite as sincere in the profession of that religion, though by no means as much disposed to persecute those who differ from him in religious belief. Indeed, if he were a persecutor of his Countrymen, he would not be where he is—in Prison; he would probably enjoy a full share of the public plunder, which is now lavished on the stupid Journals in the pay of the Castle—from the versatile, venal, and verbose *Correspondent*, to the equally dull and corrupt *Dublin Journal*. It is, however, not true, that he is in gaol because he published what is called a Libel. The Attorney-General talked, with a gloating pleasure, of the miseries poor Watty Cox endures in gaol—miseries that seem to give poignancy and zest to the enjoyments of his Prosecutor. I will make him happy; let him return from this Court to his luxuries—and, when he finds himself at his table, surrounded with every delicacy and every profusion, remember, that his Prisoner, Walter Cox, is starving. I envy

him not this relish, but I cannot suffer him to mislead you—Cox is not in gaol because he published a Libel; he is there because he is poor. His time of imprisonment expired last February, but he was condemned to pay a fine of £300, and, having no money, he has since remained in gaol. It is his poverty, therefore, and not his crime, that detains him within the fangs of the Attorney-General—if, indeed, there be any greater crime in society, than being poor.

And, next, the Attorney-General makes a beautiful eulogium on Magna Charta. There we agree. I should, indeed, prefer seeing the principles of that great Charter called into practical effect, to hearing any palinode, however beautiful, said or sung on its merits. But what recommendation can Magna Charta have for poor Cox? That Charter of Liberty expressly provides, that no man shall be fined beyond what he can pay. A very simple and natural provision against political severity. But Cox is fined 300*l.* when he is not worth a single shilling. He appealed to this Court for relief, and quotes Magna Charta. Your Lordship was not pleased to give him any relief. He applies to the Court of Exchequer; and that Court, after hearing the Attorney General against him, finds itself unable to give any relief; and, after all this, the unfortunate man is to be tantalized with hearing, that the Attorney General contrived to couple his case with the praise of the Great Charter of Liberty—a most unlucky coincidence—almost enough to drive him, in whose person that Charter is violated, into a state of insanity. Poor Watty Cox is a coarse fellow; and, I think, he would be apt to reply to that praise in the profane and contemptuous rhyme of Cromwell;* most assuredly

* By Cromwell's profane rhyme, we presume Mr. O'Connell alluded to a distich, which we should not dare to transcribe—

"Magna Charta!
"Magna f——a!"

he has no reason to treat this useless law with great reverence. It would, indeed, appear, as if the Prosecutor eulogized Magna Charta only to give more brilliancy to this triumph which he has obtained, in the person of poor Cox, over it.—The next topic of the Attorney-General's triumphant abuse was, the book entitled "The Statement of the Penal Laws."—He called it, a convicted book; he exulted that the Publisher was in prison; he traduced the Author, and he distorted and misrepresented the spirit and meaning of that book. As to the Publisher, he is, I admit, in prison.—The Attorney-General has had the pleasure of tearing a respectable Citizen, of irreproachable character and conduct, from his wife and the little children, who were rendered comfortable by his honest and persevering industry, and he has immured him in a dungeon: I only congratulate him on his victory. As to the Author, he is just the reverse of what the Attorney-General would wish him to be; he is a man of fortune; he is an able lawyer; a professional scholar; an accomplished gentleman; a sincere friend to his Country, which he has ornamented and served.—As to the book, it is really ludicrous, to an extreme degree of comicality, to call it a convicted book. There are about 400 pages in the work; it contains an elaborate, unexaggerated, and, I think, softened detail of the Laws which aggrieve the Catholics of Ireland: and of the practical results of those Laws. Such a powerful and talented exposure of the vices of that system, to which the Attorney-General is wedded, so much to his own emolument, must have excited no small share of irritation in his mind.—It produced a powerful sensation on the entire party to which he belongs; abundant attempts were made to answer it; they were paid for out of the public money; they totally failed, and yet, if the book had been erroneous, there could be nothing easier than its confutation.—If that book had been mistaken in matter of Law, or exaggerated in matter of fact, its

refutation would have been found, where we have found and proved its perfect accuracy, in the Statute Book and in the daily experience of every individual in Ireland. Truth, you are told by the Prosecutor is no defence in case of Libel—but, certainly this book was much the more provoking for being true—and yet, Gentlemen, with the most powerful incentives to prosecute this Book, the Attorney-General has been compelled, most reluctantly, to space every word of the 400 pages of text and margin, and has been unable to find any pretext for an indictment, save in a paltry note containing eight lines and a half—and three marks of admiration. My Lord, I address your Lordship particularly on the three notes of admiration, because they formed a prominent ground in your Lordships learned argument, when you decided that the passage was a Libel *per se*. Yes, Gentlemen, admire again, I pray you, the solidity and brilliancy of our Law, in which three marks of admiration are of wonderful efficacy in sending a man to prison.—But with the exception of the note of eight and a half lines, the book has borne the severest criticism of Fact and of Law. It has defied, and continues to defy the present Attorney-General and his well assorted Juries—and, as to the note which he indicted, it contained only a remark on the execution of a man who, whether innocent or guilty, was tried in such a manner, that a Gentleman of the Irish Bar, his Counsel, threw up his brief in disgust; and when the Judge who presided at the Trial ordered the Counsel to remain and defend Barry, that Counsel swore in this Court, that he rejected the Judge's mandate with contempt. What a mighty triumph was the conviction proved against this note on Barry's case! and may one be permitted mournfully to ask, whether the indignation, which might have produced indiscretion in speaking of Barry's fate, was a very culpable quality in a feeling mind, prone to detest the horrors with which human blood is sometimes

shed, under the forms and mockery of Trial?—But that conviction, although it will erase the note, will not stay the demand which an intelligent Public make for this valuable work. Already have two Editions of it been sold, and a third Edition is loudly called for, and about to appear. What, in the mean time, has been the fate of the Answers? I see two Booksellers amongst you—they will tell you, that the Answers are recollected only by the loss they have produced to them, and by the cumbering of their shelves. Such is the result of the loyal triumphs of his Grace the Duke of Richmond's Administration. May such, in every age, be the fruits of every prosecutor of free discussion, and of the assertion of political truth!—I have followed the Attorney-General through his discussion upon Walter Cox, and "The Statement of the Penal Laws," without being able exactly to conjecture his motive for introducing them. As to Cox, it appears to be the mere gratification of his delight at the misery to which that unfortunate man is reduced. As to "The Book," I can only conjecture that his wish is to insinuate to you, that the Author of "The Book" and of this Publication is the same. If that were his design, it may be enough to say, that he has not proved the fact, and, therefore, in fairness, it ought not at all to influence your decision. I go further, and tell him, that the fact is not so—that the Author is a different person—that the Writer of this alleged Libel is a Protestant—a man of fortune—a man of that rank and estimation that even the Attorney-General, were I to announce his name—which my Client will never do, or suffer his Advocate to do, that name would extort respect, even from the Attorney-General himself.

He has, in his usual fashion, calumniated the spirit and object of "The Statement of the Penal Laws." He, says it imputes Murder, and every other crime, to persons in high station, as resulting from their being Protestants. He says, that it so

tributes to the Lord Lieutenant the committing Murder on a Catholic, because he himself is a Protestant. Gentlemen, I wish you had read that book; if you did, it would be quite unnecessary for me to contradict those assertions of the Attorney-General. In fact, there never were assertions more unfounded than this: that book contains nothing that could warrant his description of it—on the contrary, the book seeks to establish this position, that the Grievances, which the Irish Catholics suffer, are not attributable to the Protestant Religion—that they are repugnant to the spirit of that Religion—and are attributable, simply and singly, to the spirit of Monopoly, and tone of superiority, generated and fostered by the system of Exclusion, upon which the Penal Code rests.—The Author of that Book is confessedly a Catholic; yet the Book states, and the Attorney-General heard the passage twice read in this Court, that, "if Roman Catholics were placed, by unjust laws, in the situation in which the Irish Protestants now are placed, they would oppress and exclude, precisely as the Protestants now do." In short, his statement and his reasonings are founded on this—that it is unjust to give any Religion exclusive political advantages; because, whatever that Religion be, the result will necessarily prove oppressive and insulting towards the less favoured Sect. He argues not exclusively against any particular Religion, but from natural causes operating on human beings. His book may be a Libel on Human Nature; but it is no more a Libel on the Protestant than on the Catholic Religion. It draws no other inference than this—that Catholics and Protestants, under similar circumstances, would act precisely in the same way.

Having followed the Prosecutor through this weary degression, I return to the next sentence of this Publication—Yet, I cannot, I must detain you still a little longer from it, whilst I supplicate your honest indignation—if in your resentments there

he ought of honesty, against the mode in which the Attorney-General has introduced the name of our aged and afflicted Sovereign—he says this is a Libel on the King—because it imputes to him a selection of improper and criminal Chief Governors—Gentlemen, this is the very acme of servile doctrine.—It is the most unconstitutional doctrine that could be uttered—it supposes that the Sovereign is responsible for the acts of his servants, whilst the Constitution declares that the King can do no wrong, and that even for his personal acts his Servants shall be personally responsible—Thus the Attorney-General reverses for you the Constitution in theory—and in point of fact where can be found in this Publication, any, even the slightest allusion to his Majesty—the theory is against the Attorney-General, the fact is against the Attorney-General—and yet, contrary to the fact and against the theory, he seeks to enlist another prejudice of yours against Mr. MAGEE! Prejudice, did I call it: oh no, it is no Prejudice—that sentiment, which combines respect with affection for my aged Sovereign, suffering under a calamity with which Heaven has willed to visit him, but which is not due to any default of his. There never was a sentiment, that I should wish to see more cherished—more honoured. To you, the King may appear an object of respect; to his Catholic subjects, he is one of veneration; to them he has been a bountiful benefactor. To the utter disregard of your Aldermen of Skinner's-alley, and the more pompous Magnats of William-street, his Majesty procured, at his earnest solicitation from Parliament, the restoration of much of our liberties: we disregard your Anti-Popery Petitions; we treated with calm indifference, the ebullitions of your bigotry; and I owe to him, that I have the honour of standing in the proud situation from which I am able, if not to protect my Client, at least to pour the indignant torrent of my discourse against his enemies, and those of his Country.

The Publication to which I now recal you, goes on to describe the effects of the facts which I have shewn you, to have been drawn from the undisputed and authentic history of former times. I have, I hope, convinced you, that neither Leland or Hume could have been indicted for stating those facts, and it would be a very strange perversion of principle, which would allow you to convict Mr. Magee, for that which has been stated by other Writers, not only without punishment, but with applause. That part of the paragraph which relates to the present day, is in these words:

"Since that period the complexion of the times has changed—the Country has advanced—it has outgrown submission, *and some forms, at least, must now be observed towards the People.* The system, however, is still the same; it is the old Play, with new Decorations, presented in an age somewhat more enlightened; the principle of Government remains unaltered—a principle of exclusion, which debars the majority of the People from the enjoyment of those privileges that are possessed by the minority, and which must, therefore, maintain itself by all those measures necessary for a Government founded on injustice."

The Prosecutor insists that this is the most libellous part of the entire Publication. I am glad he does so; because if there be amongst you a single particle of discrimination, you cannot fail to perceive that this is not a Libel—that this paragraph cannot constitute any crime. It states that the present is a system of exclusion. Surely it is no crime to say so; it is what you all say. It is what the Attorney-General himself gloried in. This is, said he, exclusively a Protestant Government. Mr. MAGEE and he are agreed. Mr. MAGEE adds, that a principle of exclusion, on account of religion, is founded on injustice. Gentlemen, if a Protestant were to be excluded from any temporal advantages upon the score of his religion, would not you say, that the principle upon which he was excluded was unjust? That is precisely what Mr. MAGEE says; for the principle which excludes the Catholic in Ireland would exclude the Protestant

in Spain and in Portugal; and then you clearly admit its injustice. So, that really you would condemn yourselves, and your own opinions, and the right to be a Protestant in Spain and Portugal, if you condemn this sentiment.

But, I would have you further observe, that this is no more than the discussion of an abstract principle of Government—it arraigns not the conduct of any individual, or of any administration—it only discusses and decides upon the moral fitness of a certain theory, on which the management of the affairs of Ireland has been conducted. If this be a crime, we are all criminals for—this question, whether it be just or not to exclude from Power and Office a class of the People for Religion?—is the subject of daily, of hourly discussion. The Attorney-General says it is quite just—I proclaim it to be unjust, obviously unjust. At all Public Meetings, in all private companies, this point is decided different ways, according to the temper and the interest of individuals. Indeed, it is but too much the topic of every man's discourse, and the gaols and the barrack of the country would not contain the hundreth part of those whom the Attorney-General would have to crowd them, if it be penal to call the principle of Exclusion unjust. In this Court, without the least danger of interruption or reproof, I proclaim the injustice of that principle.

I will then ask, whether it be unlawful to print that which it is not unlawful to proclaim in the face of a Court of Justice?—And, above all, I will ask, whether it can be criminal to discuss the abstract principles of Government? Is the theory of the Law, a prohibited subject? I had understood, that there was no right so clear and undoubted as that of discussing abstract and theoretic principles, and their applicability to practical purposes. For the first time do I hear this disputed—and now see what it is the Attorney-General prohibits—he insists upon punishing

Mr. Magee; first, because he accuses his Administration of "Errors"—secondly, because he charges them with not being distinguished for "Talents"—thirdly, because he cannot discover their "Striking Features"—and, fourthly, because he discusses an "Abstract Principle." This is quite intelligible—this is quite tangible. I begin to understand what the Attorney-General means by the Liberty of the Press—it means a prohibition of printing any thing, except praise, respecting "*the Errors, the Talents, or the Striking Features*" of any Administration, and of discussing any *Abstract Principles of Government*. Thus the forbidden subjects are Errors, Talents, Striking Features, and Principles. Neither the Theory of the Government nor its Practices are to be discussed—you may, indeed, praise them—you may call the Attorney-General "the best and wisest of men"—you may call his Lordship the most learned and impartial of all possible Chief Justices—you may, if you have powers of visage sufficient, call the Lord Lieutenant the best of all imaginable Governors. That, Gentlemen, is the boasted Liberty of the Press—the Liberty that exists at Constantinople—the liberty of applying the most fulsome and unfounded flattery, but not one word of censure or reproof. Here is an idol worthy of the veneration of the Attorney-General. Yes; he talked of his veneration for the Liberty of the Press; he also talked of its being a protection to the People against the Government. Protection! not against errors—not against the want of talents, or of striking features—not against the effort of any unjust principle—Protection! against what is it to protect? Did he not mock you?—did not he plainly and palpably delude you, when he talked of the protection of the Press? Yes. To his inconsistencies and contradictions he calls on you to sacrifice your consciences; and because you are No-Popery Men, and Distributors of Bibles, and Aldermen of Skinners-alley, and Protestant Petitioners, he requires of you to brand your souls with perjury.—

You cannot escape it; it is, it must be perjury to find a Verdict for a man who gravely admits, that the Liberty of the Press is recognized by the Law, and that it is a venerable object, and yet calls for your Verdict, upon the ground that there is no such thing in existence, as that which he has admitted, that the Law recognizes, and he himself venerates. Clinging to the fond but faint hope, that you are not capable of sanctioning, by your oaths, so monstrous an inconsistency, I lead you to the next sentence upon this Record:

"Although his Grace does not appear to know what are the qualities necessary for a Judge in Canada, or for an Aid-de-Camp in waiting at a Court, he surely cannot be ignorant what are the requisites for a Lord Lieutenant."

This appears to be a very innocent sentence, yet the Attorney-General, the venerator of that protection of the People against a bad Government, the Liberty of the Press, tells you that it is a gross Libel to impute so much ignorance to his Grace. As to the Aid-de-Camp, Gentlemen, whether he be selected for the brilliancy of his spurs, the polish of his boot, or the precise angle of his cocked hat, are grave considerations which I refer to you. Decide upon these atrocities, I pray you. But, as to the Judge in Canada, it cannot be any reproach to his Grace to be ignorant of his qualifications. The old French Law prevails in Canada, and there is not a Lawyer at the Irish Bar, except perhaps the Attorney-General, who is sufficiently acquainted with that law to know how far any man may be fit for the station of Judge in Canada. If this be an ignorance without reproach in Irish Lawyers—and if there be any reproach in it, I feel it not, whilst I avow that ignorance—yet, surely, it is absurd to torture it into a calumny against the Lord Lieutenant—a military man, and no Lawyer. I doubt whether it would be a Libel, if my Client had said, *that his Grace was ignorant of the qualities necessary for a Judge* in Ireland—for a Chief Judge, my Lord. He has not said so, however, Gentlemen; and true or false, that is not now the question under consi-

deration. We are in Canada at present, Gentlemen, in a ludicrous search for a Libel in a sentence of no great point or meaning. If you are sapient enough to suspect that it contains a Libel, your doubt can only arise from not comprehending it; and that, I own, is a doubt difficult to remove. But I mock you when I talk of this insignificant sentence.

I shall read the next paragraph at full length. It is connected with the Canadian sentence:

"Therefore, were an appeal to be made to him in a dispassionate and sober moment, we might candidly confess, that the Irish would not be disappointed in their hopes of a successor, though they would behold the same smiles, experience the same sincerity, and witness the same disposition towards conciliation. What, though they were deceived in 1795, and found the mildness of a Fitzwilliam, a false omen of concord; though they were duped in 1800, and found that the privileges of the Catholics did not follow the extinction of the Parliament, yet, at his departure, he will, no doubt, state good grounds for future expectation. That his Administration was not the time for Emancipation, but that the season is fast approaching. That there were "existing circumstances, but that now the People may rely upon the virtues even of an hereditary Prince. That they should continue to worship the false idol—that their cries must, at last, be heard; and that, if he has not complied, it is only because he has not spoken. In short, his Grace will, in no way, vary from the uniform conduct observed by most of his predecessors, first preaching to the confidence of the People, then playing upon their credulity. He came over ignorant—he soon became prejudiced, and then he became intemperate. He takes from the People their money, he eats of their bread and drinks of their wine, in return he gives them a bad Government, and, at his departure, leaves them more distracted than ever. His Grace commenced his reign by flattery, he continued it in folly, he accompanied it with violence, and he will conclude it with falshood."

There is one part of this sentence, for which I most respectfully solicit your indulgence and pardon. Be not exasperated with us for talking of the mildness of Lord Fitzwilliam, or of his Administration. But, notwithstanding the violence any praise of him has excited amongst you, come dispassionately, I pray you, to the consideration of

the paragraph. Let us abstract the meaning of it from the superfluous words. It certainly does tell you, that his Grace came over ignorant of Irish affairs—that he acquired prejudices upon those subjects, and has become intemperate. Let us discuss this part separately from the other matter suggested by the paragraph in question. That the Duke of Richmond came over to Ireland ignorant of the details of our domestic policy, cannot be matter either of surprise or of any reproach. A military man, engaged in those pursuits, which otherwise occupy persons of his rank, altogether unconnected with Ireland, he could not have had any inducement to make himself acquainted with the details of our barbarous wrongs, of our senseless party quarrels and criminal feuds; he was not stimulated to examine them by any interest, nor could any man be attracted to study them by taste.—It is, therefore, no censure to talk of his ignorance, of that with which it would be absurd to expect that he should be acquainted, and the knowledge of which, would neither have served, or exalted, or amused him.—Then, Gentlemen, it is said he became "prejudiced"—Prejudice may sound harsh in your ears, but you are not, at least you ought not, to decide upon *the sound*; it is *the sense* of the word that should determine you. Now what is the sense of the word "Prejudice" here? It means, the having adopted precisely the opinions which every one of you entertain. By "Prejudice" the writer means, and can mean, nothing but such sentiments as you cherish. When he talks of Prejudice, he intends to convey the idea, that the Duke took up the opinion, that the few ought to govern the many in Ireland—that there ought to be a favoured, and an excluded class in Ireland—that the burdens of the State ought to be shared equally, but its benefits conferred on a few. Such are the ideas conveyed by the word Prejudice; and I fearlessly ask you, is it a crime to impute to his Grace those notions which you yourselves en-

tortain? Is he calumniated, is he libelled, when he is charged with concurring with you, Gentlemen of the Jury? Will you, by a verdict of conviction, stamp your own political sentiments with the seal of reprobation? If you convict my Client, you do this, you decide that it is a Libel to charge any man with those doctrines, which are so useful to you individually, and of which you boast; or, you think the opinions just, and yet that it is criminal to charge a man with those just opinions. For the sake, therefore, of consistency, and as an approval of your own opinions, I call on you for a verdict of acquittal.

I need not detain you long on the expression "intemperate"—it does not mean any charge of excess of indulgence in any enjoyment—it is not, as the Attorney-General suggested, an accusation of indulging beyond due bounds in the pleasures of the table, or of the bottle—it does not allude, as the Attorney-General says, to midnight orgies, or to morning revels. I admit, I freely admit, that an allusion of that kind would savour of Libel, as it would certainly be unnecessary for any purpose of political discussion. But the intemperance here spoken of, is mere political intemperance—it is that violence which every man of a fervid disposition feels in support of his political opinions. Nay, the more pure and honest any man may be in the adoption of his opinions, the more likely and the more justifiable will he be in that ardent support of them, which goes by the name of intemperance. In short, although political intemperance cannot be deemed by cold calculators as a virtue, yet it has its source in the purest virtues of the human heart, and it frequently produces the greatest advantages to the Public. How would it be possible to overcome the many obstacles which self interest, and ignorance, and passion, throw in the way of improvement without some of that ardour of temper and disposition which grave men call intemperance. And, Gentlemen, are not your opinions as deserving

of warm support, as the opinions of other men; or do you feel any inherent depravity in the political sentiments which the Duke of Richmond has adopted from you, that would render him depraved or degraded by any violence in their support. You have no alternative. If you convict my Client, you condemn, upon your oaths, your own political creed—and declare it to be a Libel to charge any man with energy in your cause.

If you are not disposed to go this length of political inconsistency, and if you have determined to avoid the Religious inconsistency of perjuring yourselves for the good and glory of the Protestant religion, do, I pray you, examine the rest of this paragraph, and see whether you can, by any ingenuity, detect that non-descript, a libel in it.—It states in substance this: that this Administration, treading in the steps of former Administrations, preached to the Confidence of the People, and played on their credulity; and that it will end, as those Administrations have done, in some flattering prophecy, paying present disappointment with the coinage of delusive hope.—That this Administration commenced as usual, with preaching to the Confidence of the People, was neither criminal in the fact, nor can it be unpleasant in the recital.

It is the immemorial usage of all Administrations, and of all stations, to commence with those civil professions of future excellence of conduct, which are called, and not unaptly, "*preaching to the Confidence of the People.*" The very actors are generally sincere at this stage of the political farce; and it is not insinuated, that this Administration was not as candid on this subject as the best of its predecessors. The *playing on the Credulity of the People* is the ordinary State trick. You recollect how angry many of you were with his Grace for his Munster tour, shortly after his arrival here. You recollect how he checked the Mayor of Cork for proposing the new favourite Orange Toast—what liberality he displayed to

Popish Traders and Bankers in Limerick—and how he returned to the Capital, leaving behind him the impression that the No-Popery men had been mistaken in their choice, and that the Duke of Richmond was the Enemy of every Bigotry—the friend to every Liberality! Was he sincere, Gentlemen of the Jury; or was this one of those innocent devices which are called—playing on the Peoples Credulity? Was he sincere? Ask his subsequent conduct. Have there been, since that time, any other or different Toasts cheered in his presence? Has the name of Ireland and of Irishmen been profaned by becoming the sport of the warmth excited by the accompaniment to these Toasts? Some individuals of you could inform me. I see another Dignitary of your Corporation here (said Mr. O'Connell, turning round pointedly to the Lord Mayor)—I see a Civic Dignitary here who could tell of the Toasts of these days or nights, and would not be at a loss to apply the right name, if he were not too prudent, as well as too polite to do so—to that innocent affectation of liberality which distinguished his Grace's visit to the South of Ireland. It was, indeed, a play upon our credulity, but it can be no Libel to speak of it as such; for, see the situation in which you would place his Grace—you know he affected conciliation and perfect neutrality between our Parties at first—you know he has since taken a marked and decided part with you. Surely you are not disposed to call this a crime, as it were to convict his Grace of duplicity, and of a vile hypocrisy. No, Gentlemen, I entreat of you not to calumniate the Duke; call this conduct a mere play on the credulity of a People easily deceived—innocent in its intention, and equally void of guilt in its description. Do not attach to those words a meaning, which would prove that you yourselves condemned, not so much the writer of them, as the man who gave colour and countenance to this assertion. Besides, Gentlemen, what is your Liberty of the Press worth,

if it be worthy of a dungeon to assert, that the public credulity has been played upon? The Liberty of the Press would be less than a dream, a shadow, if every such phrase be a Libel.

But the Attorney-General triumphantly tells you, that there must be a Libel in this paragraph, because it ends with a charge of falshood. May I ask you to take the entire paragraph together? Common Sense and your duty require you to do so. You will then perceive, that this charge of Falshood is no more than an opinion, that the Administration of the Duke of Richmond will terminate precisely as that of many of his Predecessors has done, by an excuse for the past—a flattering and fallicious promise for the future. Why, you must all of you have seen, a short time since, an account of a Public Dinner in London, given by persons styling themselves "Friends to Religious Liberty." At that Dinner, at which two of the Royal Dukes attended, there were, I think, no less than four or five Noblemen, who had filled the office of Lord Lieutenant of Ireland. Gentlemen, at this dinner they were ardent in their professions of kindness towards the Catholics of Ireland, in their declarations of the obvious policy and justice of Conciliation and Concession, and they bore ample testimony to our sufferings and our merits. But I appeal from their present Declarations to their past Conduct; they are now full of liberality and justice to us, yet I speak only the truth of history, when I say, that during their government of this Country, no practical benefits resulted from all this wisdom and kindness of sentiment; with the single exception of Lord Fitzwilliam, not one of them even attempted to do any good to the Catholics or to Ireland. What did the Duke of Bedford do for us? Just nothing. Some civility indeed, in words—some playing on public credulity—but, in act and deed, nothing, nothing at all. What did Lord Hardwicke do for us? Oh, nothing, or rather less than nothing; his administration here was, in that respect, a kind of nega-

tive quality; it was cold, harsh, and forbidding to the Catholics—lenient, mild, and encouraging to the Orange Faction; the public mind lay in the first torpor caused by the mighty fall of the Union, and, whilst we lay entranced in the oblivious pool, Lord Hardwicke's Administration proceeded without a trace of that justice and liberality which, it appears, he must have thought unbefitting the season of his government, and which if he then entertained, he certainly concealed; he ended, however, with giving us flattering hopes for the future. The Duke of Bedford was more explicit, he promised in direct terms, and drew upon the future exertions of an *hereditary Prince* to compensate us for present disappointment. And will any man assert, that the Duke of Richmond is libelled by a comparison with Lord Hardwicke—that he is traduced when he is compared with the Duke of Bedford? If the words actually were these, "the "Duke of Richmond will terminate his Administration exactly as Lord Hardwicke and the Duke "of Bedford terminated their Administrations," if these were the words, none of you could possibly vote for a conviction, and yet the meaning is precisely the same. No more is expressed by the language of my Client; and, if the meaning be thus clearly innocent, it would be strange, indeed, to call on you for a verdict of conviction upon no more solid ground than this, that whilst the signification was the same, the words were different. And thus, again, does the Prosecutor require of you to separate the sense from the sound, and to convict for the sound, against the sense of the passage.

In plain truth, Gentlemen, if there be a harshness in the sound, there is none in the words. The Writer describes, and means to describe, the ordinary termination of every Administration repaying in promises the defaults of performance. And, when he speaks of falshood, he prophecies merely as to the probable or at least possible conclusion of the present Government. He does not impute to any precedent assertion, falshood; but he does

predict, that the concluding promise of this as of other Administrations, depending as those promises always do upon other persons for performance, will remain, as former promises have remained, unfulfilled and unperformed. And, is this prophecy —this prediction a crime?—Is it a libel to prophecy? See what topics this sage venerator of the Liberty of the Press, the Attorney-General, would fain prohibit. First, he tells you, that the crimes of the predecessors of the Duke must not be mentioned—and thus he forbids the history of past events. Secondly, he informs you, that no allusion is to be made to the errors, follies, or even to the striking features of the present Governors, and thus he forbids the detail of the occurrences of the present day. And, thirdly, he declares, that no conjucture shall be made upon what is likely to occur hereafter, and thus he forbids all attempts to anticipate future facts. It comes simply to this—he talks of venerating the Liberties of the Press, and yet he restrains that Press from discussing past history, present story, and future probabilities —he prohibits the past, the present, and the future —ancient records, modern truth, and prophecy are all within the capacious range of his punishments. Is there any thing else? Would this venerator of the Liberty of the Press go further? Yes, Gentlemen, having forbidden all matter of history, past and present, and all prediction of the future, he generously throws in *abstract principles*, and as he has told you, that his prisons shall contain every person who speaks of what was, or what is, or what will be, he likewise consigned to the same fate every person who treats of the theory or principles of Government, and yet he dares to talk of the Liberty of the Press! Can you be his dupes?—will you be his victims? Where is the conscience, where is the indignant spirit of insulted Reason amongst you? Has Party Feeling extinguished in your breasts every glow of virtue, every spark of manhood?

If there be any warmth about you, if you are not

clay-cold to all but Party Feeling, I would, with the air and in the tone of triumph, call you to the consideration of the remaining paragraph which has been spread on the lengthened Indictment before you. I divide it into two branches, and shall do no more with the one than to repeat it. I read it for you already; I must read it again:

"Had he remained what he first came over, or what he afterwards professed to be, he would have retained his reputation for *honest, open hostility*; defending his political principles with firmness, perhaps with warmth, but without rancor; the supporter, and not the tool of an Administration; a mistaken politician, perhaps, but an honorable man, and a respectable soldier."

Would to God I had to address another Jury! Would to God I had Judgment and Reason to address, and I could entertain no apprehension from Passion or Prejudice! Here should I then take my stand, and require of that unprejudiced Jury, whether this sentence does not demonstrate the complete absence of private malice or personal hostility. Does not this sentence prove a kindly disposition toward the individual, mixing and mingling with that discussion which Freedom sanctions and requires respecting his political conduct? Contrast this sentence with the Prosecutor's accusation of Private Malignity, and decide between Mr. Magee and his Calumniators. He, at least, has this advantage, that your Verdict cannot alter the nature of things; and that the public must see and feel this truth, that the present Prosecution is directed against the discussion of the conduct, towards the Public, of men confided with public authority—that this is a direct attack upon the right to call the attention of the People to the management of the Peoples' affairs—and that, by your Verdict of Conviction, it is intended to leave no peaceful or unawed mode of redress for the wrongs and sufferings of the People.

But I will not detain you on these obvious topics. We draw to a close, and I hurry to it. This sentence is said to be particularly libellous:

"His Party would have been proud of him; his Friends would have praised (they need not have flattered him),

and his Enemies, though they might have regretted, must have respected his conduct; from the worst quarter there would have been some small tribute of praise; from none any great portion of censure; and his Administration, though not popular, would have been conducted with dignity, and without offence. This line of conduct he has taken care to avoid; his original character for moderation he has forfeited; he can lay no claim to any merits for neutrality, nor does he even deserve the cheerless credit of defensive operations. He has begun to act; he has ceased to be a dispassionate Chief Governor, who views the wickedness and the folly of Faction with composure and forbearance, and stands, the Representative of Majesty, aloof from the contest. He descends—he mixes with the throng—he becomes personally engaged—and, having lost his temper, calls forth his private passions to support his public principles: he is no longer an indifferent Viceroy, but a frightful Partisan of an English Ministry—whose base passions he indulges—whose unworthy resentments he gratifies—and on whose behalf he at present canvasses."

Well, Gentlemen, and did he not canvas on behalf of the Ministry? Was there a titled or untitled servant of the Castle who was not dispatched to the South to vote against the Popular, and for the Ministerial Candidates? Was there a single individual within the reach of the influence of his Grace that did not vote against Prittie and Mathew in Tipperary, and against Hutchinson in Cork. I have brought with me some of the Newspapers of the day, in which this partisanship in the Lord Lieutenant is treated, and especially by Mr. Hutchinson, in language so strong and so pointed, that the words of this Publication are mildness and softness itself when compared with that language. I shall not read them for you, because I should fear that you may imagine I unnecessarily identified my Client with the violent, but merited reprobation, poured upon the scandalous interference of our Government with those Elections. I need not, I am sure, tell you, that any interference by the Lord Lieutenant with the purity of the Election of Members to serve in Parliament, is highly unconstitutional and highly criminal; he is doubly bound to the most strict neutrality—first, as a Peer, the Law prohibits his

interference—secondly, as Representative of the Crown, his interference in elections is an usurpation of the Peoples' Rights; it is, in substance and effect, High Treason against the People, and its mischiefs are not the less by reason of there being no punishment affixed by the law to this treason. If this offence, Gentlemen, be of daily recurrence —if it be frequently committed, it is upon that account only the more destructive to our liberties, and therefore requires the more loud, direct, and frequent condemnation; indeed, if such practices be permitted to prevail, there is an end of every remnant of freedom, our boasted Constitution becomes a mockery and an object of ridicule, and we ought to desire the manly simplicity of unmixed despotism. Will the Attorney-General—will his colleague the Solicitor-General, deny, that I have described this offence in its true colours? Will they attempt to deny the interference of the Duke of Richmond in the late Elections? I would almost ventur to put your Verdict upon this, and to consent to a conviction, if any person shall be found so stocked with audacity, as to presume publicly to deny the interference of his Grace in the late Elections, and his partisanship in favour of the Ministerial Candidates. Gentlemen, if that be denied, what will you, what can you think of the veracity of the man who denies it—I fearlessly refer the fact to you, on that fact I build. This interference is as notorious as the sun at noon day; and who shall venture to deny that such interference is described by a soft term when it is called Parti sanship. He who uses the influence of the Executive, to control the choice of the Representatives of the People, violates the first principles of the Constitution, is guilty of political sacrilege, and profanes the very sanctuary of the Peoples' Rights and Liberties. And if he should not be called a partisan, it is only because some harsher, and more appropriate term ought to be applied to his delinquency. I will recal to your minds an in-

stance of violation of the Constitution, which will illustrate the situation of my Client and the protection which, for your own sakes, you owe him. When, in 1687, King James removed several Protestant Rectors, in Ireland, from their Churches, against Law and Justice, and illegally and unconstitutionally placed Roman Catholic Clergymen in their stead, would any of you be content that he should be simply called a partisan! No, Gentlemen, my Client and I, Catholic and Protestant though we be, agree perfectly in this, that partisan would have been too mild a name for him, and that he should have been branded as a violator of Law—as an enemy to the Constitution, and, as a Crafty Tyrant, who sought to gratify the prejudices of one part of his Subjects, that he might trample upon the liberties of all. And what, I would fain learn, could you think of the Attorney-General who prosecuted, or of the Judge who condemned, or of the Jury who convicted a Printer for publishing to the world this tyranny—this gross violation of law and justice. But how would your indignation be roused, if James had been only called a partisan, and for calling him a partisan, a Popish Jury had been packed, a Popish Judge had been selected, and that the Printer, who, you will admit, deserved applause and reward, met condemnation and punishment. Of you—of you, shall this story be told, if you convict Mr. Magee. The Duke has interfered in Elections—he has violated the Liberties of the Subject—he has profaned the very Temple of the Constitution, and he who has said that in so doing he was a Partisan, from your hands expects punishment.—Compare the kindred offences: James deprived the Protestant Rectors of their livings; he did not persecute, nor did he interfere with their religion; for Tithes, and Oblations, and Glebes, and Church Lands, though solid appendages to any Church, are no part of the Protestant religion. The Protestant religion would, I presume, and for the honour of human nature, I

sincerely hope, continue its influence over the human mind, without the aid of those extrinsic advantages. Its pastors would, I trust and believe, have remained true to their charge, without the adventitious benefits of temporal rewards; and, like the Roman Catholic Church, it might have shone forth a glorious example of firmness in religion, setting persecution at defiance.—James did not attack the Protestant Religion, I repeat it, he only attacked the revenues of the Protestant Church—he violated the Law and the Constitution, in depriving men of that property, by his individual authority, to which they had precisely the same right with that by which he wore his crown. But is not the controuling the Election of Members of Parliament a more dangerous violation of the Constitution?—does it not corrupt the very sources of Legislation, and convert the Guardians of the State into its Plunderers. The one was a direct and undisguised crime, capable of being redressed in the ordinary course of the law, and producing resistance by its open and plain violation of Right and of Law; the other disguises itself in so many shapes, is patronized by so many high examples, and is followed by such perfect security, that it becomes the first duty of every man, who possesses any reverence for the Constitution, or any attachment to Liberty, to lend all his efforts to detect, and, if possible, to punish it. To any man who loved the Constitution or Freedom, I could safely appeal for my Client's vindication, or if any displeasure could be excited in the mind of such a man, it would arise only because of the forbearance and lenity of this Publication. But the Duke is called a Frightful Partisan. Granted, Gentlemen, granted. And is not the interference I have mentioned, frightful? Is it not terrific? Who can contemplate it without shuddering at the consequences which it is likely to produce? What gentler phrase—what lady-like expression should my Client use? The

Constitution is sought to be violated, and he calls the author of that violation a Frightful Partisan. Really, Gentlemen, the fastidiousness which would reject this expression, would be better employed in preventing or punishing crime, than in dragging to a dungeon the man who has the manliness to adhere to truth, and to use it. Recollect also—I cannot repeat it too often—that the Attorney-General told you, that "the Liberty of the Press was the best protection of the People against the Government." Now if the Constitution be violated—if the purity of election be disturbed by the Executive, is not this precisely the case when this protection becomes necessary? It is not wanted, nor can the Press be called a Protector so long as the Government is administered with fidelity, care and skill. The Protection of the Press is requisite only when integrity, diligence, or judgment do not belong to the Administration; and that protection becomes the more necessary in the exact proportion in which those qualities are deficient. But what protection can it afford, if you convict in this instance? for, by doing so, you will decide that nothing ought to be said against that want of honesty—or of attention—or of understanding—the more necessary will the protection of the Press become—the more unsafe will it be to publish the truth—and, in the exact proportion in which the Press might be useful, will it become liable to punishment. In short, according to the Attorney-General's doctrine, when the Press is "best employed, and wanted most," it will be most dangerous to use it. And thus, the more corrupt and profligate any Administration may be, the more clearly can the public Prosecutor ascertain the sacrifice of his selected victim. And call you this Protection? Is this a Protector, who must be disarmed the moment danger threatens, and is bound a prisoner the instant the fight has commenced?

Here I should close the Case—here I should shortly recapitulate my Client's Defence, and leave him to your consideration—but I have been already too tedious, and shall do no more than recal to your recollection the purity, the integrity, the entire disinterestedness of Mr. MAGEE's motives. If money were his object, he could easily procure himself to be patronized and salaried; but he prefers to be persecuted and discountenanced by the Great and Powerful, because they cannot deprive him of the certain expectation, that his exertions are useful to his long-suffering ill-requited Country.

He is disinterested, Gentlemen; he is honest; the Attorney General admitted it, and actually took the trouble of administering to him advice how to amend his fortune and save his person. But the advice only made his youthful blood mantle in that ingenuous countenance, and his reply was painted in the indignant look, that told the Attorney General he might offer wealth, but he could not bribe; that he might torture, but he could not terrify! Yes, Gentlemen, firm in his honesty, and strong in the fervor of his love of Ireland he fearlessly awaits your verdict, convinced that even you must respect the man whom you are called upon to condemn. Look to it, Gentlemen, consider whether an honest, disinterested man shall be prohibited from discussing public affairs—consider whether all but flattery is to be silent—whether the discussion of the errors and the capacities of the Ministers is to be closed for ever? Whether we are to be silent as to the crimes of former periods—the follies of the present, and the credulity of the future; and, above all, reflect upon the demand that is made on you to punish the canvassing of abstract principles. Has the Attorney General succeeded? Has he procured a Jury so fitted to his object, as to be ready to bury in oblivion every fault and every crime, every error and every imperfection of public men, past, present and future—and who shall, in addition, silence

any dissertation on the theory or principle of Legislation. Do, Gentlemen, go this length with the Prosecutor, and then venture on your oaths. I charge you to venture, to talk to your families of the venerable Liberty of the Press, the Protection of the People, against the Vices of the Government.

I should conclude, but that the Attorney-General compels me to follow him through another subject; he has told you, and told you truly, that besides the matter set out in the indictment, the entire of which, Gentlemen, we have already gone through. This Publication contains severe strictures upon the alleged indelicacy in the Chief Justice issuing his Ministeral Warrant in a case which was afterwards to come before him judicially, and upon the manner in which the Jury was attempted to be put together in Dr. Sheridan's case, and in which a Jury was better arranged in the case of Mr. Kirwan. Indeed the Attorney-General seemed much delighted with these topics; he again burst out into an enraptured encomium upon himself, and, as it were, inspired by his subject, he rose to the dignity of classical quotation, when he exclaimed:

Hic hoc adsum qui feci.

He forgot to add the still more appropriate remainder of the sentence:

Mea fraus omnis.

Yes, Gentlemen, he has avowed, with more manliness than discretion, that he was the contriver of all those measures. With respect to the Warrant which his Lordship issued in the stead of the ordinary Justices of the Peace, and upon a charge not amounting to any breach of the peace, I shall say nothing at present. An obvious delicacy restrains me from entering upon that subject, and as the interest of my Client does not counteract that delicacy, I shall refrain. But I would not have it understood, that I have formed no opinion on the subject. Yes, I have formed an opinion, and a strong and decided opinion, which I am ready to

support as a Lawyer and a Man, but the expression of which I now sacrifice to a plain delicacy. But I must say, that the Attorney General has thrown new light on this business—he has given us information we did not possess before. I did not before know that the warrant was sought for and procured by the Attorney General—I thought it was the spontaneous act of his Lordship, and not in consequence of any private solicitation from the Attorney General. In this respect he has set me right—it is a fact of considerable value, and, although the consequences to be deduced from it are not pleasing to any man, loving, as I do, the the purity of justice; yet I most heartily thank the Attorney General for *the fact—the important fact.*

His second avowal relates to Doctor Sheridan. It really is comfortable to know how much of the indecent scene exhibited upon his Trial belonged to the Attorney-General. He candidly tells us, that the obtrusion of the Police Magistrate, Sirr, as an Assistant to the Crown Solicitor, was the act of the King's Attorney-General. "*Adsum qui feci,*" said he. Thus he avows that he procured an Orangeman—*I do not exactly understand what is meant by an* ORANGEMAN; *some of you could easily tell me*—that he caused this Orangeman to stand in open Court, next to the Solicitor for the Crown, with his written paper, suggesting who were fit Jurors for his purpose, and who should be put by. Gentlemen, he avows that this profligate scene was acted in the open Court, by his directions. It was by the Attorney-General's special directions, then, that such men as John Lindsay, of Sackville-street, and John Roche, of Strand-street, were set aside—the latter because, though amongst the most wealthy and respectable Merchants in your city, he is a Papist—and the other because, although a Protestant, he is tainted with liberality; the only offence, public or private, that could be attributed to him. Yes, such men as these were set aside by

the Attorney-General's Aid-de-Camp, the salaried Justice of the Police Office.

The next avowal is also precious. This Publication contains also a Commentary on the Castle-list Jury that convicted Mr. Kirwan; and the Attorney-General has also avowed his share in that transaction: he thus supplies the only link we wanted in our chain of evidence, when we challenged the array upon that Trial. If we could have proved that which the Attorney-General, with his "*adsum qui feci*," yesterday admitted, we should have succeeded, and got rid of that Pannel. Even now, it is delightful to understand the entire machinery, and one now sees at once the reason why Sir Charles Saxton was not examined, on the part of the Crown, in reply to the case we made. He would, you now plainly see, have traced the arrangement to the Attorney-General, and the array must have been quashed. Thus, in the boasting humour of this Attorney-General, he has brought home to himself personally that which we attributed to him only in his official capacity, and he has convicted the man of that which we charged only upon the office.

He has, he must have, a motive for this avowal; if he had not an adequate object in view, he would not have thus, unnecessarily and wantonly, taken upon himself all the reproach of those transactions. He would not have boasted of having, out of Court, solicited an extra-judicial opinion, in the form of a Warrant from his Lordship—he would not have gloried in employing an Orangeman from the Police Office to assist him, in open Court, with instructions in writing how to pack his Jury—still less would he have suffered it to be believed, that he was a party at the Castle, with the Acting Secretary of State, to the arrangement of the Jury, that was afterwards to try a person prosecuted by the State. He would not have made this, I must say, disgraceful avowal, unless he were influenced by an adequate motive. I can

easily tell you what that motive was. He knew your prejudices—he knew your antipathy! Alas! your interested antipathy, to the Catholics, and, therefore, in order to induce you to convict a Protestant of a Libel for a Publication innocent, if not useful, in itself, in order to procure that conviction from your party feelings and you prejudices, which he despaired of obtaining from your judgments. He vaunts himself to you as the mighty destroyer of the hopes of Popish Petitioners —as a man capable of every act within, as out of the Profession, to prevent or impede any relief to the Papists. In short, he wishes to shew himself to you as an active partisan at your side; and, upon those merits he who knows you best, claims your Verdict—a Verdict which must be given in on your oaths, and attested by and in the name of the God of the Christians.

For my part I frankly avow that I shudder at these scenes; I cannot, without horror, view this interfering and intermedling with Judges and Juries, and my abhorrence must be augmented, when I find it avowed, that the actors in all these sad exhibitions, were the mere puppets of the Attorney-General, moved by his wires, and performing under his controul. It is in vain to look for safety to person or property, whilst this system is allowed to pervade our Courts; the very Fountain of Justice may be corrupted at its source, and those waters which should confer health and vigour throughout the Land, can then diffuse nought but mephitic and pestilential vapours to disgust and to destroy. If honesty, if justice be silent, yet prudence ought to check these practices. We live in a new æra—a melancholy æra, in which perfidy and profligacy are sanctioned by high authority; the base violation of plighted faith—the deep stain of dishonor —infidelity in love—treachery in friendship—the abandonment of every principle, and the adoption of every frivolity and of every vice that can excite hatred combined with ridicule; all—all this, and

more, may be seen around us, and yet it is believed, it is expected, that this system is fated to be eternal. Gentlemen, we shall all weep the insane delusion, and, in the terrific moments of alteration, you know not, you cannot know, how soon, or how bitterly, the ingredients of your own poisoned chalice may be commended to your own lips.

With these views around us—with these horrible prospects lying obscenely before us—in sadness and in sorrow, party feeling may find a solitary consolation. My heart feels a species of relief, when I recollect that not one single Roman Catholic has been found suited to the Attorney-General's purposes. With what an affectation of liberality would he have placed at least one Roman Catholic on his Juries, if he could have found one Roman Catholic Gentleman in this City, capable of being managed into fitness for those Juries. You well know that the very first Merchants of this City, in wealth, as well as in character, are Catholics. Some of you serve occasionally on Special Juries in important cases of private property. Have you ever seen one of those Special Juries without many Catholics?—frequently a majority—seldom less than one half of Catholics. Why are Catholics excluded from these State Juries? who shall venture to avow the reason? Oh; for the partisan indiscretion that would blindly avow the reason. It is in truth a high compliment which Persecution, in spite of itself, pays to independent Integrity. It is in fact a compliment. It is intended for a reproach, for a Libel. It is meant to insinuate, that such a man, for example, as Randal M'Donnell—the pride and boast of Commerce—one of the first contributors to the revenues of the State, and the first in all the sweet charities of social life—that he would refuse to do justice upon his oath to the Crown, and perjure himself in a State Trial, because he is a Roman Catholic. You, even you, would be shocked if any man were so audacious as to assert

in words, so foul a libel, so false a calumny, and yet what does the conduct of the Attorney-General amount to? why, practically, to just such a libel, to precisely such a calumny. He acts a part which he would not venture to speak, and endeavours silently to inflict a censure, which no man could be found so devoid of shame as to assert in words.—And here, Gentlemen, is a libel for which there is no punishment: here is a profligate calumny, for which the Law furnishes no redress—he can continue to calumniate us by his rejection. See whether he does not offer you a greater insult by his selection; lay your hands to your hearts, and in private communion with yourselves, ask the reason why you have been sought for and selected for this Jury—will you discover, that you have been selected because of admitted impartiality.—Would to God, you could make that discovery—it would be one on which my Client, might build the certain expectation of a triumphant acquittal.—Let me transport you from the heat and fury of domestic politics; let me place you in a foreign land—you are Protestants, with your good leave, you shall for a moment be Portuguse, and Portuguese is now an honourable name—for right well have the People of Portugal fought for their Country, against the foreign Invader. Oh! how easy to procure a similar spirit, and more of bravery, amongst the People of Ireland. The slight purchase of good words, and a kindly disposition, would convert them into an impenetrable guard for the safety of the Throne and the State. But advice and regret are equally unavailing, and they are doomed to calumny and oppression. The reality of persecution, and the mockery of justice, until some fatal hour shall arrive, which may preach wisdom to the dupes, and menace with punishment the oppressor.

In the mean time, I must place you in Portugal. Let us suppose, for an instant, that the Protestant Religion is that of the People of Portugal—

the Catholic, that of the Government—that the House of Braganza has not reigned, but that Portugal is still governed by the Viceroy of a foreign Nation, from whom no kindness, no favour has ever flowed, and from whom Justice has rarely been obtained; and upon those unfrequent occasions, not conceded generously, but extorted by force, or wrung from distress by terror and apprehension, in a stinted measure and ungracious manner—you, Protestants, shall form, not as with us in Ireland, nine-tenths, but some lesser number; you shall be only four-fifths of the Population; and all the Persecution which you have yourselves practised here upon Papists, whilst you, at the same time, accused the Papists of the crime of being persecutors, shall glow around you—your native land shall be to you the Country of Strangers, you shall be aliens in the soil that gave you birth; and, whilst every foreigner may, in the land of your forefathers, attain rank, station, emoluments, honors, you alone shall be excluded, and you shall be excluded for no other reason but a conscientious adherence to the religion of your ancestors. Only think, Gentlemen, of the scandalous injustice of punishing you, because you are Protestants.—With what scorn—with what contempt, do you not listen to the stale pretences—to the miserable excuses, by which, under the name of state reasons and political arguments, your exclusion and degradation is sought to be justified. Your reply is ready—"Perform your iniquity—Men of crimes (you exclaim) be unjust—punish us for our fidelity and honest adherence to truth, but insult us not by supposing, that your reasoning can impose upon a single individual, either of us or of yourselves."

In this situation, let me give you a Viceroy—he shall be a man who may be styled by some person disposed to exaggerate beyond bounds his merits, and to flatter him more than enough, "an honorable man and a respectable soldier;" but, in point of fact, he shall be of that little-minded class of

beings who are suited to be the play-thing of knaves. One of those men who imagine they govern a nation, whilst, in reality, they are but the instruments upon which the crafty play with safety and with profit. Take such a man for your Viceroy——Protestant Portuguese. We shall begin with making this tour from Tralos Montes to the Kingdom of Algesira—as one amongst us should say, from the Giant's Causeway to the Kingdom of Kerry. Upon this tour he shall affect great candour and good-will to the poor suffering Protestants. The bloody anniversaries of the inquisitorial triumphs of former days shall be for a season abandoned—and over our inherent hostility the garb of Hypocrisy shall, for a season be thrown. Enmity to the Protestants shall become, for a moment, less apparent; but it will be only the more odious for the transitory disguise. The delusion of the hour having served its purpose, your Viceroy shews himself in his native colours—he selects for office, and prefers for his pension-list, the men miserable in intellect, if they be but virulent against the Protestants—to rail against the Protestant Religion—to turn its holiest rites into ridicule. To slander the individual Protestants are the surest, the only means to obtain his favor and patronage. He selects from his Popish Bigots some, being more canine than human, who, not having Talents to sell, brings to the Market of Bigotry his Impudence—who, with no quality under Heaven, but gross, vulgar, acrimonious, disgustful, and shameless abuse of Protestantism to recommend him, shall be promoted to some Accountant-Generalship, and shall riot in the spoils of the People he traduces, as it were to crown with insult the severest injuries. This Viceroy selects for his favourite Privy Councillor some learned Doctor, *half Lawyer, half Divine, an entire Brute*, distinguished by the unblushing repetition of calumnies among the Protestants. This man has asserted, that Protestants are Perjurers and

Murderers on principle—that they keep no faith with Papists, but hold it lawful and meritorious to violate every engagement, and commit every atrocity towards any person who happens to differ with the Protestants in Religious belief. This man raves thus in public against the Protestants, and has turned his ravings into large personal emoluments. But whilst he is the oracle of minor Bigots, he does not believe himself; he has selected for the partner of his tenderest joys, of his most extatic moments, he has chosen for the intended mother of his children, for the sweetener and solace of his every care—a Protestant, Gentlemen of the Jury.

Next to the vile instruments of Bigotry, his Accountant-General and Privy Councillor, we will place his acts—the Protestants of Portugal shall be exposed to insult and slaughter, an Orange Party, a Party of Popish Orangemen, shall be supposed to exist, they shall have liberty to slaughter the unarmed and defenceless Protestants, and then sit peaceably at their fire sides. They shall be let loose in some Portuguese district called Monaghan; they shall cover the streets of some Portuguese town of Belfast with human gore; and, in the metropolis of Lisbon, the Protestant Widow shall have her harmless Child murdered in the noonday, and his blood shall have flowed unrequited, because his assassin was very loyal when he was drunk, and had an irresistible propensity to signalize his loyalty by killing Protestants. Behold, Gentlemen, this Viceroy, depriving of command, & staying the promotion of every military man who shall dare to think Protestants, men—or who shall presume to suggest that they ought not to be persecuted. Behold this Viceroy promoting and rewarding the men who insulted, and attempted to degrade the first of your Protestant Nobility. Behold him in public, the man I have described. In his personal concerns he receives an enormous revenue from the People he thus misgoverns. See in his manage-

ment of that revenue a parsimony at which even his enemies blush. See the paltry sum of a single joe refused to any Protestant charity, whilst his bounty is unknown even at the Popish Institutions for benevolent purposes. See the most wasteful expenditure of the Public money. Every job patronized—every profligacy encouraged. See the resources of Portugal diminished. See her discords and her internal feuds increased. And lastly, behold the course of Justice perverted and corrupted.

It is thus, Gentlemen, the Protestant Portuguese seek to obtain relief by humble Petition and supplication. There can be no crime surely for a Protestant oppressed, because he follows a Religion which is, in his opinion, true, to endeavour to obtain relief by mildly representing to his Popish oppressors, that it is the right of every man to worship the Deity according to the dictates of his own conscience; to state respectfully to the Governing Powers that it is unjust, and may be highly impolitic to punish men, merely because they do not profess Popery, which they do not believe—and to submit, with all humility, that to lay the burdens of the State equally, and distribute its benefits partially, is not justice; but although sanctioned by the pretence of religious zeal, is in truth, iniquity, and palpably criminal. Well, Gentlemen, for daring thus to remonstrate, the Protestants are persecuted. The first step in the persecution is to pervert the plain meaning of the Portuguese language, and a law prohibiting any *disguise* in apparel, shall be applied to the ordinary *dress* of the individual; it reminds one of *pretence* and *purpose*. To carry on those persecutions, the Viceroy chuses for his first Inquisitor the descendant of some Popish Refugee—some man with an hereditary hatred to Protestants; he is not the Son of an Irishman this Refugee Inquisitor—no, for the fact is notorious, that the Irish Refugee Papists were ever distinguished for their liberality,

as well as for their gallantry in the field, and talent in the Cabinet. This Inquisitor shall be, Gentlemen, a descendant from one of those English Papists, who was the dupe or the contriver of the Gunpowder Plot! With such a chief Inquisitor, can you conceive any thing more calculated to rouse you to agony, than the solemn mockery of your trial. This chief Inquisitor begins by influencing the Judges out of Court; he proceeds, to inquire out fit men for his interior tribunal, which, for brevity, we will call a Jury. He selects his Juries from the most violent of the Popish Orangemen of the City, and procures a conviction against law and common sense, and without evidence. Have you followed me, Gentlemen? Do you enter into the feelings of Protestants thus insulted, thus oppressed, thus persecuted—their enemies and traducers promoted, and encouraged, and richly rewarded—their friends discountenanced and displaced—their persons unprotected, and their characters assailed by hired calumniators—their blood shed with impunity—their revenues, parsimoniously spared to accumulate for the individual, wastefully squandered for the State—the emblems of Discord, the war-cry of Disunion, sanctioned by the highest authority, and Justice herself converted from an impartial arbitrator into a frightful partisan? Yes, Gentlemen, place yourselves as Protestants under such a persecution. Behold before you this Chief Inquisitor, with his prejudiced Tribunal—this Gambler, with a loaded die—and now say, what are your feelings—what are your sensations of disgust, abhorrence, affright? But if, at such a moment, some ardent and enthusiastic Papist, regardless of his interests, and roused by the crimes that were thus committed against you, should describe, in measured, and cautious, and cold language, these scenes of oppression and iniquity—if he were to describe them, not as I have done, but in feeble and mild language, and simply state the facts for your benefit, and the

instruction of the Public. If this liberal Papist, for this, were dragged to the Inquisition, as for a crime, and menaced with a dungeon for years, good and gracious GOD! how would you revolt at and abominate the men who could consign him to that dungeon! With what an eye of contempt, and hatred, and despair, would you not look at the packed and profligate Tribunal, which could direct Punishment against him who deserved Rewards! What pity would you not feel for the advocate, who heavily, and without hope, laboured in his defence?—and with what agonized and frenzied despair would you not look to the future destinies of a land in which Perjury was organized, and from which Humanity and Justice had been for ever banished.

With this picture of yourselves in Portugal, come home to us in Ireland. Say, is that a crime, when applied to Protestants, which is a virtue and a merit, when applied to Papists?—Behold how we suffer here, and then reflect, that it is principally by reason of your prejudices against us, that the Attorney-General hopes for your Verdict.—The good man has talked of his impartiality—he will suppress, he says, the Licentiousness of the Press. I have, I hope, shewn you the right of my Client to discuss the public subjects which he has discussed, in the manner they are treated of in the Publication before you; yet he is prosecuted. Let me read for you a paragraph which the Attorney-General has not prosecuted—which he has refused to prosecute:

"BALLYBAY, JULY 4, 1813.

"A Meeting of the Orange Lodges was agreed on, in consequence of the manner in which the Catholics wished to have persecuted the Loyalists in this County last year, *when they even murdered some of them for no other reason than their being Yeomen and Protestants.*"

And again,

"It was at Ballybay, that *the Catholics murdered one Hughes, a Yeoman Serjeant, for being a Protestant, as was given in evidence at the Assizes by a Catholic witness.*"

I have read this passage from *The Hibernian Journal*, of the 7th of this month—I know not whether you can hear unmoved a paragraph, which makes my blood boil to read. But I shall only tell you, that the Attorney-General refused to prosecute this Libeller. Gentlemen, there have been several murders committed in the county of Monaghan, in which Ballybay lies. The persons killed happened to be Roman Catholics—their murderers are Orangemen. Several of the persons accused of those murders are to be tried at the ensuing Assizes. The agent applied to me personally with this Newspaper—he stated, that the obvious intention was to create a prejudice upon the approaching trials, favourable to the murderers, and against the prosecutors—he stated what you, even you, will easily believe, that there never was a falshood more flagitiously destitute of truth, than the entire paragraph. I advised him, Gentlemen, to wait on the Attorney General in the most respectful manner possible, to shew him this paragraph, then to request to be allowed to satisfy him as to the utter falshood of the assertions which this paragraph contained, which could be the more easily done, as the Judges who went that Circuit, could prove part of it to be false. And I directed him to entreat that the Attorney-General, when fully satisfied of the falshood, would prosecute the Publisher of this, which I think I may call, an atrocious Libel. Gentlemen, the Attorney-General was accordingly waited on—he was respectfully requested to prosecute upon the terms of having the falshood of these assertions first proved to him. I need not tell you, he refused. These are not the Libellers he prosecutes. Gentlemen, this not being a Libel on any individual, no private individual can prosecute for it—and the Attorney-General turns his Press loose on the Catholics of the County of Monaghan, whilst he verulently assails Mr. MAGEE, for what must be admitted to be comparatively mild and inoffensive.

No, Gentlemen, he does not prosecute this Libel. On the contrary, this Paper is paid enormous sums of the public money. There are no less than five Proclamations in the Paper containing this Libel; and, it was proved in my presence, in a Court of Justice, that, besides the Proclamations and public Advertisements, the two Proprietors of the Paper had each a pension of £400 per annum, for supporting Government, as it was called. Since that period, one of those Proprietors has got an Office worth, at least, £800 a year; and the Son of the other, a Place of upwards of £400 per annum; so that, as it is likely that the original pensions continue, here may be an annual income of £2000, paid for this Paper, besides the thousands of pounds annually, which the insertion of the Proclamations, and public Advertisements cost. It is a Paper of the very lowest and most paltry scale of talent, and its circulation is, fortunately, very limited; but it receives several thousands of pounds of the money of the men whom it foully and falsely calumniates. Would I could see the man who pays this Proclamation money, and these Pensions at the Castle.—[Here Mr. O'Connell turned round to where Mr. Peele* sat.]—Would I could see the man who, against the fact, asserted that the Proclamations were inserted in all the Papers, save in those whose Proprietors were convicted of a Libel, I would ask him whether this be a Paper that ought to receive the money of the Irish People? Whether this be the legitimate use of the public purse? And when you find this Calumniator salaried and rewarded, where is the impartiality, the justice, or even the decency of prosecuting Mr. Magee for a Libel, merely because he has not praised public men, and has discussed public affairs in the spirit of Freedom and of the Constitution? Contrast the situation of Mr. Magee with the Proprietor of *The Hibernian Journal*—the one is prosecuted with all the weight and influence of the Crown, the other Pensioned by the Ministers of

* Chief Secretary to the Lord Lieutenant.

the Crown—the one dragged to your bar for the sober discussion of political topics, the other hired to disseminate the most horrible calumnies! Let the Attorney-General now boast of his impartiality, can you credit him on your oaths? Let him talk of his veneration for the Liberty of the Press, can you believe him on your consciences? Let him call the Press the Protection of the People against the Government. Yes, Gentlemen, believe him when he says so; let the Press be the Protection of the People; he admits that it ought to be so. Will you find a Verdict for him, that shall contradict the only assertion upon which he and me, however, are both agreed?

Gentlemen, the Attorney-General is bound by this admission; it is part of his Case, and he is the Prosecutor here; it is part of the evidence before you, for he is the Prosecutor. Then, Gentlemen, it is your duty to act upon that evidence, and to allow the Press to afford some Protection to the People.

Is there amongst you any one Friend to Freedom—is there amongst you one man, who esteems equal and impartial justice—who values the People's Rights as the foundation of private happiness, and who considers life as no boon without liberty—is there amongst you one Friend to the Constitution—one man who hates Oppression—if there be, Mr. Magee appeals to his kindred mind, and confidently expects an acquittal.

There are amongst you men of great Religious Zeal—of much Public Piety.—Are you sincere?—Do you believe what you profess?—With all this zeal—with all this piety, is there any conscience amongst you—is there any terror of violating your oaths?—Be ye hypocrites, or does genuine religion inspire ye?—If you be sincere—if you have conscience—if your oaths can controul your interests, then Mr. Magee confidently expects an acquittal.

If amongst you there be cherished one ray of

pure Religion—if amongst you there glow a single spark of Liberty—if I have alarmed Religion, or roused the spirit of Freedom in one breast amongst you, Mr. MAGEE is safe, and his Country is served; but if there be none—if you be Slaves and Hypocrites, he will await your Verdict, and despise it.

The *Solicitor-General.*—Gentlemen of the Jury, the very able Counsel who has addressed you on the part of the Defendant, and to whose address no candid man can deny the praise of ability, has thought proper to prepare you for a splendid misrepresentation on my part. Against that charge of misrepresentation imputed to me; against the insinuation, however qualified by the compliment annexed to it, I set the tenor of my practice, and I fling back the charge with contempt, as a base and slanderous imputation.

Mr. *Wallace.*—I beg the Solicitor-General's pardon; but, in Mr. O'Connell's absence from Court, I may safely say for him, he by no means intended to impute a wilful misrepresentation to him.

The *Solicitor-General.*—I believe Mr. Wallace knows enough of my principles, not to suspect me of such; but I certainly must repeat it, that if the insinuation intended, in the most indirect or lateral manner, to say, that I was capable of prostituting my public duty to misrepresent any man, it is a slander as false as unfounded, and is badly compensated for by the puny compliment annexed to it.—Gentlemen, on the part of this Prosecution, I have a cool, temperate, and sober duty to discharge. I recollect that, which I should not be surprised if every man here had forgotten—I recollect, that I am standing in a Court of Justice, and that it is my duty to address you, my Lord, as a Judge, and you, Gentlemen, as sworn Jurors. I know, that however the Learned Gentleman may have been justified in the range he has taken, standing, as he does, the Counsel of an accused man—a character, the privileges of which, I trust, I will never see abridged—

I would not be equally pardonable; I have a different duty to discharge, and I will not embark into a religious controversy, into ancient history, and modern politics. It is impossible for me to fulfil the Learned Gentleman's expectations, even if I had the ability to do so, by clothing this trite and thread-bare topic in splendid decorations. Gentlemen, Mr. O'Connell has anticipated your verdict; and he appeals from it to the public opinion, before which that verdict will be tried—I recognize no such tribunal—I practise not in that Court—I disclaim such modern authorities, who take upon them to sit in judgment on every man and measure, outraging common sense and decorum—who judge the Judges, and legislate for the Parliament. If that Gentleman expects that I will enter upon the discussion of any question which can only agitate the minds of the People, I commence by saying, I must disappoint him. I admit the ability with which he has argued his Client's case; it has superseded the necessity of supposing—

Mr. *O'Connell* having come into Court, said, that, understanding the Solicitor-General had misunderstood him, he wished to explain—he certainly could not have thought of imputing to the Solicitor-General that by circumlocution, which he would not say of him in any character.

The *Solicitor-General.*—My Lord, Mr. O'Connell will admit, that the expression was calculated to wound the mind of any man who respects his reputation. Gentlemen, it is impossible to conceive a more narrow or simple question than that which you are impannelled to decide. It has been attributed to me, that, on former occasions, I contended for slavish doctrines, and had endeavoured to fetter the Constitutional Jurisdiction of a Jury, and transfer their functions to the Bench. But it was a charge which could not be justly made against me—the question has been tried before the proper Tribunal—that construction of the Statute has received the sanction of the highest

Authority in the State, and I disclaim any other ulterior jurisdiction. But, Gentlemen, on this occasion, I say it is not only your duty, but your exclusive duty; the whole question is for your disposal—a question upon which the Judge has as little right, as, I am sure, he has disposition to interfere—that is now undoubted law. It was the ancient law, once misunderstood, and again recognized. By the Libel Act, you are to decide on the whole matter of the Record, not only to pronounce whether the Traverser published this Libel, but also if with the intention and meaning imputed by the Indictment; and, on this popular question, it is the duty of the Jury to construe it not closely or rigidly against the Defendant, but with the most liberal indulgence—this is your exclusive province. The Judge has no right, save that of stating to you his opinion, but without any authority to controul yours. If these be slavish doctrines, I plead guilty to the charge. The question here is, whether this Libel be a transgression of the Liberty of the Press, or a Publication within its reasonable limits. I now put out of the case all that has been so powerfully said, with an eloquence better suited to another place, and little applicable to the question you have to decide upon. And here give me leave to ask you, whether the conduct of the Defendant on this Trial, and the speech of his Counsel, are evidence of the enslaved state of the Country which it is so anxiously sought to be represented? Is it evidence of an enslaved Country, and of an arbitrary Government, that an accused man should be indulged in every attempt to obstruct the administration of Justice—an attempt, which I am now warranted in calling despicable and contumacious? —that an Advocate should be heard for four hours without interruption, not arguing his Client's case, but discussing subjects most remote and inapplicable? If this be a proof of slavery, I call on the Gentleman to point out a period in which a freer ever existed. I call upon the Gentleman's know-

ledge of History and Politics, to state where there is such a free administration of Justice, and which his Client has not only enjoyed, but abused. That has been the very object of this factious Publication. That very Publication deals out the most atrocious aspersions, not merely against the Executive—not merely against your predecessors in that box, but against that authority vested in an individual, whom delicacy here forbids me to speak of in terms I would wish.

It is, Gentlemen, against the Administration of Justice which this slander has levelled all its shafts, but which, I trust, will this day gain a double triumph, by shewing, the accused has the benefit of even a dilatory defence, and that the guilty cannot escape punishment.—My Lord, I trust, after the indulgence which the Counsel before me has so amply experienced, that I may not be thought unwarrantable, in alluding to a subject on which he has thought proper to speak with such severity—freedom, he may call it—but, to say the least of it, with severity, upon the conduct of my Right Honorable Colleague. He has done me the honor of alluding to me in terms of respect; but the compliment has been clogged in such a manner, that I beg it may be known, that I accept of it, not on the terms of its being dissevered from the interests or deserts of the Gentleman beside me. I will not suffer a weight of obloquy to fall on my Friend, for the sake of a flimsy and distinct compliment. I will not make a separate peace, for the purpose of getting rid of that responsibility which I owe, and which I am not disposed to shrink from. If there be an odium for the construction of the Convention Act, I have my share of it—a subject on which the changes have been rang, about *purpose* and *pretence*, *delegation* and *representation*, till the public ear is sick of the monotonous vibration. The whole odium, if any, would be thrown upon my Honorable Friend! but if he be guilty of ignorance or corruption, I am equally criminal. If

he has forgot or mistaken his duty, I am equally culpable. But that construction has been recognised in the highest Court of criminal jurisdiction, from which I know not, nor recognise an appeal to the People.—That question has been reduced into a judgment; and I resist, I despise any such Court of Appeal. I rest now upon the authority of the Court of King's Bench. I then rested upon the knowledge of the Man, who, through life, has shewn as much virtue as talent, neither of which is Faction or Obloquy able to sully, though it may assail.—Gentlemen of the Jury, a considerable portion of the Learned Counsel's speech, and a considerable part of his Client's Libel, have been employed in sending forward to the Public repeated Editions of a confuted Calumny, and the basest slander that ever actuated the mind of man, for the defamation of private character, and the disturbance of the public peace. I am not surprised, that the person, in whose Paper the Calumny is repeated, should instruct his Counsel to re-publish it here. His Client was interested in the circulation of that shameless Libel; for the man who was daring, and bearding the justice of the Country, had an interest in bringing its Courts of Justice in contempt—and, when he was composing a Libel upon the Government, his guilty conscience told him, it was necessary to conclude it with an attack upon the Law of the Land.—Gentlemen, the slanderous assertion in this Paper, has been repeated on this Trial, as on former occasions, that the Government of the Country had stained its hands in picking out a Jury for the perversion of the public justice; and you heard it yesterday put forward, with the most shameful confidence, that the Attorney-General, sworn to the honest performance of the highest duties in the State, had himself nominated the Jury to the Sheriff, who was corrupt enough to execute his unlawful commands. Gentlemen, you saw that young man, with that credulity peculiar to faction, which is disposed to

believe a thing, which men of cool judgment could not presume—you saw that young man after every attempt to delay the Trial was resorted to, endeavour to prejudice the public mind by that foul dispersion. You saw Triers sworn, and an examination take place till at length the public indignation was absorbed in public ridicule, and the base attempt was met with the involuntary laughter of the audience. Such, Gentlemen, was the fate of yesterday's transaction. Yet, I will venture to predict, that what was yesterday convicted as a falshood—that direct charge of corruption on the Sheriff—the direct charge of what is worse than corruption in the Attorney-General—refuted, and convicted, and ridiculed, as that Libel was—at the hour I speak Faction has it flying through the Country, asserting that to be true, which has been condemned as false. I am sorry to say, that the licentiousness of the Press has become so ungovernable, that the Trials for Libels are no longer useful or necessary, except for the punishment of the guilty. As to teaching the Public, insulted by those Calumnies, and guarding it against abuse, I despair of it. I have witnessed the utter insufficiency of Trial with that object; I have seen those calumnies established as clear as any proposition could be demonstrated, and which must have created conviction in the minds of other men; but with the Factiuos of the present day, those calumnies, like the Hydra's heads, only generate from defeat.—Gentlemen, it is found that nothing can stop the propagation of those slanders; and it therefore has become the duty of those entrusted with the guardianship of the public justice, to see whether, if not the example, the punishment will be inoperative.

Gentlemen, speaking to you as Jurymen, or Portuguese, or Petitioners, let me ask you, what have you to try? In the first instance, whether Mr. John Magee has published the Libel in question. Has it been denied? Yes, it has been denied upon the Record in question, and you must try the issue the plea of Not Guilty; and, as far as Mr.

O'Connell's Speech denies Mr. MAGEE being the Proprietor of *The Dublin Evening Post*, it is applicable to the present question: so far, I admit it contains an argument on an issue of fact—and, if you find it so, it is a complete answer to the Indictment, and a perfect exculpation of his Client. If Mr. O'Connell will take the declaration of a Law Officer in favour of the Liberty of the Press, I have read my profession wrong, or he is radically unfounded in his definition of it. There never has been a topic so misunderstood, or, at least, so misrepresented. The Liberty of the Press is invaluable; so is the Liberty of the Subject. The Liberty of the Press is, to every man's mind, what the Liberty of the Subject is to the Person. Will any man say, that the Liberty of the Subject licenses me to commit a Crime, and shall the Liberty of the Press authorize me to commit Slander?—If I raise my arm for the perpetration of Murder, I can't call in to my defence the Liberty of the Subject. If I raise my voice in Slander, and wield my pen in Defamation, it is an outrage on Common Sense to say, I am justified by the Liberty of the Press. If such an argument was tolerated, the consequence resulting from the two Liberties would be, that every man would have a right to do and write what he pleases.—Mr. O'Connell has alluded to two other topics, on which he is mistaken: he has said, that Truth is not a Libel, and that every man has a right to discuss Public Characters. As to the right of discussion, that exists; but it is like every other right—it has its limits. As to the trite and vulgar topic, that Truth is no Libel, I think it a proposition unworthy the abilities of the Gentleman who proposed it. I take it, that the Law against Slander in this country is founded on this principle—it is nothing but a transcript, in civil society, of the Law of GOD, which forbids the bearing false witness against our Neighbour. It is that law which interdicts Slander—a crime which every religious system prohibits, every written law

denies, and every honest heart restrains itself from committing. In civil society, the Tribunals of Public Justice are the only Tribunals for the redress of public or private wrongs—and no man has a right to turn Public Accuser before any Tribunal, except the authorized Tribunals of the Land. There are two reasons:—In the first place, no man has a right to wound the feelings of another, except in the discharge of a public duty—and, secondly, no man has a right to indulge his own passions and prejudices, by imputing to another that which may provoke a breach of the peace. What has led to this mistaken proposition, of Truth not being a Libel, is this:—If a man brings an Action, and the Defendant justified, and proves all that he published of the Plaintiff was true, he disentitles him from Damages; for the Law is not so absurd, that the Party shall recover by virtue of his own guilt. But what is the true criterion? Why, that the Tribunal, before which the Action is brought, is not one for punishment of the offence, but for the reparation of an injury; and a man coming int Court with his crimes about him, in that case, claims to enrich himself with the fruits of his own criminality; but that only applies as against a Plaintiff, who has no right to Damages. I apply this test—let the man who fails in an Action, on account of the Truth of the Libel, go defeated out of Court. But, in the next hour, if he changes his character, and, instead of looking after damages for a civil injury, he appears in the name of the Crown, and prosecutes the offender, that offender cannot, by alleging the truth of the defamation, escape the punishment of a public delinquent. If a man is guilty of a crime, you may prosecute him, but you cannot defame him. You may say, "the man is guilty"—true; but you are usurping the functions of the Public Law; you act as Judge, Accuser, and Executioner, and that in your own case, and you thereby endanger the public peace; so that there is now no question, that the defence in a

Civil Action is totally inadmissible on a Prosecution for Slander. This is not the language of any Judge who now fills the Bench, and to whom this Libel would impute slavish and arbitrary doctrines, but of Lord Holt, the ablest Constitutional Judge at the golden period of the Revolution.—This leads me to the next view of the case of Libel between man and man. When one Subject takes liberties with another's fame, other principles also come into application, namely, the claims which a public man has upon the remedial or vindictive Laws of his Country.—I freely admit, that the public man is exposed to public investigation. In this Country, it is the indisputable privilege, and the duty of every Subject, to canvass the conduct of every public man—but, although a public situation exposes him to criticism and observation, it does not expose him to slander and calumny.—Gentlemen of the Jury, if that was not the case, no man would accept of a place, except those who, merely for the gains of office, would risk the loss of character; and, if that was the law, the Public would have much right to complain. God forbid that the man divested himself of his rank, by the acceptance of office!—the consequence would be, a public situation would be a pinnacle on which the man of rank an' worth would be exalted, for the ruffian and defamer to shoot his slander and malignity at. None, then, but the lowest in society would accept a situation upon such terms, and every thing respectable in life would be excluded. God knows, the public man, in even the humblest situation, is, to himself at least, an object of compassion. What is he exposed to? Every man has a right to judge of him; few judge fairly, many most unjustly, always by the event; every thing is imputed to error and to crime, which is but the result of accident, and the decree of Providence; his risks are great, and he must expect injustice.—To the public man, let his virtues be what they may, I say this to him—"Be thou as pure as ice, as

chaste as snow, thou shalt not escape calumny." Every man has a right to canvass the conduct of a public man, and pronounce his judgment. But are there no limits? Is there no line of demarcation? Is crime to be imputed to him? Is advantage to be taken of his elevated rank, to impute offences to him, which, if he was in a private situation, would be punishable? No; the public man is not only entitled to the protection of the Laws of his Country, but peculiarly under the public care, whilst he is discharging a public duty. That is the true distinction, and by it let us try the Libel before the Court. Let us see whether it be the fair discussion of the conduct of a public man, or the malignant defamer taking advantage of the liberty of canvassing, to traduce.—The first assertion is, that his Grace the Lord Lieutenant was not better than the worst of his Predecessors—and then, Gentlemen, recollect the comment which his Counsel was instructed to give on this text, and the class of persons selected to explain away this Libel on the Duke of Richmond:—Lord Strafford, who died on the block for his enormities—the Earl of Essex, who suffered for one of the basest acts of treachery and foulest crimes a man could be guilty of—and some other Lord Lieutenant, who authorized Sir Walter Raleigh to commit a crime at which human nature shudders. And here look at the motives imputed to those, than the worst of whom the Duke of Richmond is not better—"They insulted, "they oppressed, they murdered, and they deceived." We will call on your Lordship to state the Law to to the Jury—to tell them whether, because Mr. Magee finds matter of complaint against other Lord Lieutenants, it becomes justifiable to impute Murder to the Duke of Richmond. But the Libel stops not here; it proceeds to allege against the Lord Lieutenant another foul crime, a deliberate determination to subvert the Constitution of the Country. It is stated that he knows well, he cannot introduce Martial Law, but he is directly ac-

sused of having provided for its future introduction, by ensuring a Military Government, by contributing to the erection of Barracks throughout the Kingdom. Gentlemen, that charge is not found upon the Indictment—but when it is stated, that we have imputed an unjust meaning to that Paper, it becomes our privilege to resort to other passages, to shew the feeling and meaning with which he has made those unwarrantable charges. He states that, "In short, his Grace will in no "way vary from the uniform conduct observed by "most of his Predecessors; first, *preaching to the* "*confidence of the People*; then *playing upon their* "*credulity*.—" He came over ignorant, he soon be-"came prejudiced, and then he became intemperate. "He takes from the People their money, he eats "of their bread, and drinks of their wine—in re-"turn, he gives them a bad Government, and, at "his departure, leaves them more distracted than "ever. His Grace commenced his reign by flat-"tery; he continued it in folly; he accompanied "it with violence, and he will conclude it with "falshood."

Is this the fair criticism of a public man? Before the highest tribunal in the Country, would such language be allowed as fair discussion? In the Parliament, would any man be suffered to say that the Lord Lieutenant was guilty of murder? Even the boasted freedom of speech in Parliament, would not permit it. The public man may be brought by impeachment for trial by his Peers, and the highest punishment known to the Law inflicted on him, if he be guilty. But I deny the right of any individual to exercise the censorial power of the People, and inflict his condemnation on the character of another. Says Lord Holt, "the public man is not to be held up to detestation, which can have only for its object to disaffect the People from the Government—to bring Loyalty into contempt, and endanger the public peace." This is peculiarly necessary in a Country like this, for in no other

Country is the shadow of such a right suffered to exist. It is the necessary evil of a Country subject to the continual mischiefs of Faction. I do believe, that political happiness arises from the opposition of parties in the State; but it is necessary to preserve it from working a mischief that might destroy it. Faction, like poisons in some medicines, provides a wholesome corrective to our constitutions, or like the irregularities of our climate, those detonations, whilst they disturb, only serve to purify our political atmosphere. The wholesomeness of the Empire arises from the continual agitation of the elements of the Constitution; and, if we are not cursed or blessed with the equal and unclouded sky of other political climates, we are free from those frantic convulsions which disturb them.—Faction is one of those instruments which work the public good; but the Constitution applies a controuling power, which must regulate its operation, and guard against its doing mischief—otherwise our very Freedom would become a curse, and we would gladly change with the most arbitrary Government on the Continent, where the Liberty of the Press is neither known nor understood.—Mr. O'Connell, my Lord, has challenged any one to shew the limits of the Law of Libel; but, if I have been able to convey myself, there is no necessity for fine-drawn distinctions to do so—and I am sure you will be of opinion, that I impair not the Liberty of the Press in convicting this malignant Libeller, who is circulating his mischievous and poisonous Slanders amongst a mercurial, irritable, and agitated People—Gentlemen of the Jury, I have heretofore argued this case upon general principles. I have not, as yet, spoken of the illustrious and valuable Character which is the subject of this base and slanderous Publication. I tremble not at the danger of participating in the odium and ridicule which may be excited amongst the Mob, by my eulogizing the character of that honorable and worthy man; but I will not do it—

not because I am unwilling, but because I am unequal to his praise. I will not risk the poverty of my expression in doing justice to the princely qualities of his head and heart; for I feel my language sinking, as my subject rises above me. I speak of the Duke of Richmond as a noble and virtuous Gentleman, as an incorruptible Statesman, as a Soldier, who is the very soul of honor, as a sincere and enthusiastic friend and a generous foe. I only associate him with the throng of Worthies that enobles the annals of the British Peerage. I join him with the great and good; but I rate not his worth and virtues by his troops of friends and hosts of admirers—by appealing to the hearts of a Family who adore him, and the feelings of every man who, within the sphere of his influence, respect and love him—I describe him, I estimate him by his Enemies, I eulogize him in proportion to the number and virulence of those whose hostility he has provoked—when I look at the libellous and discontented Press—when I look at the calumnies of those Newspapers, which are thronged with the most seditious and inflammatory topics, for the purpose of raising a spirit of hatred towards the British Connection, eulogizing every thing hostile and rebellious, and disparaging every thing loyal—when I find every thing connected with the integrity of the Empire slandered and reviled—I build the Duke of Richmond's character, not on his merits, not on his virtues, not on the purity of his mind and rectitude of his conduct, not on the love of his family and the number of his friends, but I build his imperishable fame on every Enemy of his Country, every separatist, every rebel, every profligate and discontented man, being his foe. But their malignity can never do his character an injury, or sully the splendor of his fame, as long as the rebel and the separatist hates and loaths the loyalty and and triumph of our brave Army, as long as it shall be humbled and punished by a temperate administration of the law, and as long as the wealth, glory

and success of the Empire, shall inflame the wicked agitators of the Country, so long will the hostility of the faction be the proudest leaf, that wreaths around the Duke of Richmond's monument—"*Semper Honos, nomenque tuum laudesque manebunt.*" If I should find in one column of a Newspaper, a malignant invective against the Duke of Richmond—in another, an elaborate panegyric on the Emperor Napoleon; if I should find in one column, the successes of our Allies ridiculed and disparaged, and in another, the reverses of the common Enemy palliated and deplored; every paltry success of the foe magnified—every discomfiture of our friends ridiculed, would I not be warranted in saying, that the Press had gone beyond its limits? Gentlemen, it is your peculiar privilege to decide upon the feelings and motives of the Defendant in this Publication; and, let me ask, have you nothing to assist you? Have you not witnessed the progress of this Trial? Do you remember your imprisonment for four hours yesterday in that box? Is the Defendant unjustly accused, who, by the course of his defence, has manifested an hostility to Public Justice and its administration? The Indictment was found in January last, and has he not endeavoured to elude Justice by an attempt to postpone this Trial, which already had been put off two or three times, and that on the solemn oath of the Defendant, that Mr. Wellesley Pole Mr. Robert Peel, Sir Charles Saxton, and Mr. Fitzgerald, were material and necessary Witnesses, without the benefit of whose testimony he could not safely go to trial? You saw the shameless and miserable subterfuge used to postpone the Trial, Gentlemen of the Jury. Is such the conduct of a man, whose heart, as it has been said, beats high with pure and patriotic ardour? Is it thus he would evince it, by trifling with the Public Justice of the Country? Will you listen to that man eulogizing himself as the Champion of Public Liberty, whilst he defeats, as far as he can, the administration of Public Jus-

tice?—The Trial at last proceeds; and here let me pause—Mr. Peele and Mr. Fitzgerald, without whose testimony it was sworn the Defendant could not safely go to trial, are present, and he does not produce them; but, he tells you, he wants one Witness to sustain their evidence, which one Witness is absent.—Let me observe upon something else which occurred in the progress of yesterday. It was necessary to produce the Officers of the Stamp Office. I appeal to every man, whose mind is unsophisticated by revolutionary principles, and unbiassed by resentful prejudices, whether a more lively disgust could have been excited during the cross-examination of those Witnesses, in order to shew that department of the Government was corrupt, and under an undue influence, in the payment of Stamps.—Gentlemen of the Jury, every man who libels the different branches of the State, when put upon his trial for the offence, thinks himself at liberty to assert that the imputation is true, and put the Government of the Country upon its trial, not merely for the allegations in the Libel, but for every scandalous imputation which Ingenuity can suggest, and Malignity fabricate.—What, Gentlemen, is the result? Whilst Mr. MAGEE stands here as a Criminal, he wishes to start up in the character of Prosecutor, and put the Duke of Richmond at the bar of his calumniating Press, to arraign every Officer connected with public affairs, for peculation and corruption, and, instead of defending himself, to criminate them.

But, Gentlemen of the Jury, the great blow remained to be given to the respect due to the Administration of Justice! Good GOD! How the patience of the Court was affronted, and the feelings of every honorable mind agonized by that base and abominable charge, suggested by the desperate resources of a self convicted criminal—the accusation, that the Attorney-General had packed the Jury which was to try the man he prosecuted! Gentlemen, there was an investigation—you saw it, and

my Lord Chief Justice was obliged to look on, and see the forms of Justice intulted. I believe the experiment was made to try the judicial patience, and my Learned and Hon. Friend was obliged to listen to the charge of a crime, of which, if he was guilty, my imagination cannot furnish me with a punishment adequate to the offence, or with the degree of infamy which it would attach to his name. He has not succeeded—but he has attempted to libel and defame the character of my Honorable Friend; and, if he be found guilty of this Libel, he must pay dearly for the gratification; and nothing but punishment, I fear, will disabuse him of his errors. I hope in God, he may awaken to a sense of his errors—to a sense of the mischiefs he is doing himself and his Country—and to a sense of the motives which have induced others to make an instrument of his simplicity, for their own wicked and interested views.

Gentlemen of the Jury, at this late hour of the day, I feel myself incapable of making further observations—I have disclaimed the arduous discussion—and, indeed, it would be impossible for any man to follow the able Advocate through the History of Religion and Politics, which he has laid before you—I disclaim my ability to answer him: but to the question before us, I know it has been said, that the Duke of Richmond is not a Friend of Ireland. If any man understands Ireland as connected with any thing less than the Imperial greatness, and a part of the British Empire; if any person contemplates the interests of Ireland, as separated from England—in the apprehension of the Rebel and the Separatist, the Duke of Richmond is not the Friend of Ireland.—But, as I understand Ireland is a part of the Imperial greatness, God forbid any man could be so infatuated as not to consider the Duke of Richmond as her firmest Friend. I look upon Ireland as identified with England—I hold the impossibility of a separate existence. I consider Ireland identified with Eng-

kind, not only by law, but by language—by interests, by blood, and affection. I cannot contemplate a possibility of a separate existence. I consider Ireland as contributing to all her successes, and ready to join her in all her difficulties. I consider Ireland as struggling with her Foes, sharing in her glories, and mingled with her praise—I see them contending in an honorable rivalship of reciprocal benefits. I see Ireland repaying England for the triumphs of Nelson, with the victories of Wellington, and, like two broad columns, sustaining, amidst the wreck of Empires, the noble edifice of the British Constitution.—Such is my view of Ireland; and, in that view, I will not suffer any man to represent the Duke of Richmond as an Enemy to my Country. I say, Gentlemen of the Jury, that it is impossible for the most profligate Libeller that has written, even in the columns of *The Dublin Evening Post*, to state a circumstance in the Administration of the Duke of Richmond, which could have justified this attempt at a religious discussion. It was impossible for me not to take so much notice of the Person named in this Libel; I say it does not come within the class of cases which gives the Defendant a right to such discussion. Gentlemen, I have avoided any political discussion; I hold no political situation; I will not hesitate to say, that I am not warranted to speak on the subject of Catholic Emancipation. But no man can be a friend to the measure, who endeavours to agitate the Country, and promote its disturbance. Those are men who profess to be the Advocates of Toleration, who are the worst of its Enemies. What I mean by Toleration is, the man who, distrusting the infallibility of his own judgment, looks with an eye of charity upon others. I consider Toleration as the offspring of a sound judgment, and a benevolent heart.—But what is modern Toleration? It is this: it allows no man to think for himself—you must agree with him on every subject, public and private, and, if you

differ on the smallest matter, you are assailed by the anathema of its hostility. The modern Tolerator insists on controuling every man's sentiments, and subjecting them to his own despotic will. You cannot argue with the modern Tolerator, for you dare not differ from him—he prescribes the limits of your reason, and the rule of your judgment—you must think with him, and act with him. He throws down an iron formula of opinions, and to it you must screw yourself, till you are tortured into adaptation.—If, at this day, the public man does any thing which the modern Tolerator disapproves, he is libelled in his person, and slandered in all the relations of life.—It was said, by an unfortunate and great Female Character,* in her last words upon the scaffold, "Oh! Liberty, what crimes are "not committed in thy name!"—and thus may I exclaim, Oh! Toleration, what Intolerance is not practised in thy name!

The Chief Justice then charged the Jury at considerable length. He stated the general principles of the Law of Libel, the reason, and true construction of it. He told them, that however it might once have been disputed, what were the precise limits of their powers of deciding the question of Libel or no Libel, that difficulty had been removed by the Act, commonly called the Libel Act, which tells the Jury, that it is their right to judge of the whole matter upon the Record, and give a general Verdict of Guilty or Not Guilty. That Verdict it would be their right and duty to pronounce upon the present Publication—and, from a consideration of the Evidence, which consisted chiefly in the reading of the Paper itself, to say, if the Publication, as spread upon the Indictment, was or was not a Libel, as charged by the Indictment.—His Lordship then read the Publication which was the subject matter of the Trial, accurately recapitulated the Evidence in proof of

* Madame Roland.

its Publication in *The Dublin Evening Post*, and said, that as the Court, before whom a Trial for a Libel was had, was not debarred the right of pronouncing an opinion upon any Publication charged as a Libel, as in all other cases coming before it, he would say, that, in his opinion, the Paper in question was a gross and scandalous Libel, and on which, if they believed the Evidence of the Publication, they were bound to find a Verdict of Guilty against the Defendant. But, having thus stated his opinion, he would leave the question for their decision, as belonging peculiarly to the Jury.

The Jury retired, and, after a short consultation, brought in a Verdict of—GUILTY.

The Defendant's Counsel then applied to the Court, that he might be at liberty to stand out till the next Term, upon the most satisfactory Securities, as the Judgment of the Court could not be pronounced till that time. The *Attorney-General*, being referred to for his consent, refused it.

Mr. MAGEE's Counsel applied for leave to have him committed to Kilmainham, rather than Newgate Gaol, which having been likewise referred to the Attorney-General for his consent, he said he would consider of it; but the Sheriff of the County not being present, Mr. MAGEE was, in the mean time, committed to Newgate.

Counsel for the Prosecution—The ATTORNEY-GENERAL, the SOLICITOR-GENERAL, Serjeants MOORE, BALL, and M'MAHON.—*Agent*, THOS. KEMMIS, Esq. Crown Solicitor.

Counsel for the Defendant.—Messrs. O'CONNELL, WALLACE, HAMILTON, PERRIN, FINLAY, and PHILLIPS.—*Agent*, Mr. GABRIEL WHISTLER.

ERRATUM.

In our hurry through the Press a most unaccountable blunder has escaped the Printer.

In page 138, for *Hic*, &c. read

Me, me, qui feci, adsum; in me convertite ferrum.

Trial of
J. Mage
1813

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